

# NORTH DAKOTA LEGISLATIVE COUNCIL

---

## ADMINISTRATIVE RULES COMMITTEE

### NORTH DAKOTA BOARD OF ADDICTION COUNSELING EXAMINERS

#### PROPOSED ADMINISTRATIVE RULES

On 2-25-09 the North Dakota Board of Addiction Counseling Examiners received a letter from the North Dakota Legislative Council outlining the following questions to be reviewed and answered by the Board regarding proposed administrative rule changes. We submit the following testimony as direct answers to the submitted questions:

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.

The proposed administrative rules did not result from statutory changes.

2. Whether the rules are related to any federal statute or regulation.

The proposed administrative rules are not related to any federal statute or regulation.

3. A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearing held on the rules.

The Board followed the rulemaking procedure set forth in the Procedure for Adopting Administrative Rules issued by The Office of Attorney General. Public notices were posted in all North Dakota newspapers through the ND Newspaper Association. Notice was also posted on the Board's website. The dates for the public hearings were: April 24, 2008, 10:00am to 12:00pm, and November 20, 2008, 1:00 pm to 2:00 pm. Both were held at the State Capitol.

4. Whether any person has presented a written or oral concern, objection or complaint for agency consideration with regard to these rules.

Throughout the process of proposed administrative rule changes, there have been both written and oral concerns, objections and complaints. These have been reviewed via subcommittees to the NDBACE and formal recommendations have been offered for the Board's consideration. Each was reviewed by the Board and responded to via letter from the Board regarding decisions made on separate motions. For further information, please refer to the answer to question #6.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

The approximate cost of giving public notice and holding the hearings is \$3,000.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

In April 2005 the Division of Mental Health and Substance Abuse provided comment to the North Dakota Board of Addiction Counseling Examiners (NDBACE) regarding ongoing vacancies of Licensed Addiction Counselors in the public and private sectors across the state of North Dakota. They identified significant problems with reciprocity at that time and respectfully requested that the NDBACE review and amend the administrative rules to allow seasoned addiction counselors from other states the ability to apply for and receive licensure in the state of North Dakota. Of primary concern was the need to decrease addiction services across the state of North Dakota due to the significant decrease in addiction counselors to meet the growing need.

Shortly thereafter, Peg Boren, LAC, president of the NDBACE at that time, requested a committee be developed for the review of the administrative rules and to provide recommendations to the NDBACE. The original subcommittee consisted of 3 NDBACE members, and representatives from the following addiction associations in North Dakota: North Dakota Addiction Counselors Association, North Dakota Addiction Treatment Providers Coalition, North Dakota Coalition of Training Consortiums, and the Division of Mental Health and Substance Abuse.

There was considerable discussion concerning the following issues:

- number of training hours required in our state
- the examination process as it relates to competency
- reciprocity
- private practice

Regarding these issues, recommendations to the NDBACE included the following:

- decrease the number of training hours to 1000 from 1400
- discontinue the oral examination and continue with the written examination

- these two elements would allow North Dakota to become closer to other states in relation to the issue of reciprocity
- Allow someone to apply for private practice with a Bachelor's degree and 5 years of experience.
- Allow years of experience in the mental health fields and the addiction profession in other states to be applied to training hours for initial licensure in the state of North Dakota.

After approval from the NDBACE, the first public hearing was held on at the end of 2007 with support for and against each of the identified listings. Some of the administrative rules passed at that time. Opposition to discontinuing the oral examination, number of training hours, and lessening private practice regulations was identified in addition to support for the rule changes. The NDBACE then requested a second committee be formed to review public comment and provide recommendations to the Board. The Board then reversed its decision regarding the following:

- Training hours to remain at 1400
- Keep the oral examination and provide a choice to take the oral examination or to replace this with 2000 hours of internship following the 1400 hours of training
- Lessen the private practice regulations.

Upon review of these recommendations the Board overturned its original decision and adopted these changes.

After approval from the NDBACE, the second public hearing was held on April 24, 2008 from 10-12 with support for and against each of the identified listings. Written comment was also received after that date and considered by the NDBACE.

Further research was done by the undersigned secondary to national changes in addiction counseling examinations. The International Certification & Reciprocity Consortium (IC & RC), a national organization in which state addiction counseling Boards belong, as part of the competency based testing had been in the process of changing the examination process. Part of their examination process included an oral case presentation examination. During the process of amending the administrative rules, no decision had been made by the IC & RC regarding any national examination procedures. However,

after the final vote of the NDBACE and after the public hearing had taken place, the IC & RC had discontinued its oral examination process secondary to the potential for legal litigation. It amended its written examination to include competency based questions regarding a case example which was consistent from one examination to another.

This change was then brought to the attention of the NDBACE and a small subcommittee of 3 individuals from the Board was asked to review this new information and provide a recommendation to the Board.

Recommendations included the following:

- Adopt the IC & RC competency based examination
- Discontinue the current oral examination process in North Dakota

In addition to public hearings, contact with the North Dakota Addiction Counselors Association, the Coalition of Training Consortiums, the Division of Mental Health and Substance Abuse, and the North Dakota Addiction Treatment Providers Coalition had ensued. Annually, there is a state wide conference referred to as the Addiction Summit in which presentations regarding the administrative rule changes and protocol of public comment were reviewed.

Throughout these discussions, there appears to be significant support for the identified rule changes within each of these entities. Although some opposition is identified among the Oral Examiners, the NDBACE recognized the importance of this decision as 44 states have discontinued their Oral Examination process. In an attempt to become closer in the area of reciprocity, it is the final recommendation of the NDBACE to discontinue to Oral Examination process as a part of licensure.

7. Whether a regulatory analysis was required by North Dakota Century Code Section 28-32-08 and whether that regulatory analysis was issued.

Please refer to a letter sent to the Attorney General's office dated 12-3-08.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued.

Please refer to a letter sent to the Attorney General's office dated 12-3-08.

9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09.

Please refer to a letter sent to the Attorney General's office dated 12-3-08.

10. If these rules were adopted as emergency rules under NDCC Section 28-32-03.

None of the proposed administrative rules were adopted as emergency rules under NDCC Section 28-32-03.

Respectfully Submitted,

Anna M. (Andi) Johnson, LAC, LADC

Vice President – North Dakota Board of Addiction Counseling Examiners



# NORTH DAKOTA BOARD OF ADDICTION COUNSELING EXAMINERS

PO Box 975 . Bismarck, ND 58502 . 701.255.1439  
www.ndbace.org . Fax: 701.224.9824 . ndbace@aptnd.com

February 3, 2009

Mr. John Walstad  
Code Revisor  
Legislative Council  
600 East Boulevard, 2<sup>nd</sup> Floor  
Bismarck, ND 58505-0360

Dear Mr. Walstad:

Enclosed please find a copy of the amendments to North Dakota Administrative Code article 4.5-02.1 regarding addiction counseling licensure and a copy of each written comment and a summary of each oral comment on the rules. By letter dated February 2, 2009 the Attorney General approved the proposed rules as to their legality. On December 3, 2008 the Board of Addiction Counseling Examiners adopted the rules as approved, and is now submitting the rules for publication in the North Dakota Administrative Code.

Thank you for your attention to this matter.

Sincerely,



Nikki Owings  
Board Administrator

Enclosure



Wayne Stenehjem  
ATTORNEY GENERAL

STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL  
600 E BOULEVARD AVE DEPT 125  
BISMARCK, ND 58505-0040  
(701) 328-2210 FAX (701) 328-2226  
www.ag.nd.gov

OPINION

February 2, 2009

Ms. Nikki Owings  
Board Administrator  
North Dakota Board of Addiction Counseling Examiners  
PO Box 975  
Bismarck, ND 58502-0975

Dear Ms. Owings:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. art. 4.5-02.1 concerning addiction counseling licensure, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was not issued or requested, 3) a takings assessment was not prepared, 4) a small entity regulatory analysis and an economic impact statement were not prepared because the agency is exempt from the requirement to prepare one, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem  
Attorney General

eee/vkk

cc: John Walstad, Legislative Council

FEB - 3 2009



# NORTH DAKOTA BOARD OF ADDICTION COUNSELING EXAMINERS

PO Box 975 . Bismarck, ND 58502 . 701.255.1439  
www.ndbace.org . Fax: 701.224.9824 . ndbace@aptnd.com

December 3, 2008

The Honorable Wayne Stenehjem  
Attorney General  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0040

Dear Mr. Stenehjem:

Enclosed please find the proposed amendments to N.D. Admin. Code title 4.5 by the Board of Addiction Counseling Examiners. The proposed rules have been approved by the Board of Addiction Counseling Examiners. In accordance with N.D.C.C. § 28-32-14, the Board of Addiction Counseling Examiners requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code. The time for review of these rules should be recorded under AG3050B (Board of Addiction Counseling Examiners).

Attached for purposes of review is a copy of the full and abbreviated Notices of Intent to Amend Administrative Rules; and Affidavit of Publication from Newspaper Association; a copy of one of the actual notices as published; a copy of the letter filing the Notice and Administrative Rules with the Legislative Council; a copy of all written comments; a copy of the written summary of each oral comment; the Board of Addiction Counseling Examiners' written record of consideration of all public comments received.

No regulatory analysis was required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.

No takings assessment was required because the rule does not limit the uses of real property.

These rules do not implement legislation from the most recent legislative session.

No small entity economic impact statement was required because none of the proposed rules will have an adverse economic impact on small entities.

No small entity regulatory analysis was required because the agency is exempt from the requirement to prepare one.

Sincerely,



Nikki Owings  
Board Administrator  
North Dakota Board of  
Addiction Counseling Examiners

Enclosures

**NORTH DAKOTA BOARD OF  
ADDICTION COUNSELING**  
**EXAMINERS**

---

PO Box 975 . Bismarck, ND 58502 . 701.255.1439  
www.ndbace.org . Fax: 701.224.9824 . ndbace@aptnd.com

October 14, 2008

Mr. John Walstad  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard, 2<sup>nd</sup> Floor  
Bismarck, ND 58505-0360

Dear Mr. Walstad:

The Notice of Intent to Amend and Repeal Administrative Rules and a copy of the proposed rules are enclosed as required by N.D.C.C. § 28-32-10(1).

Sincerely,



Nikki Owings  
Board Administrator

Enclosures

### NOTICE OF INTENT TO AMEND AND REPEAL ADMINISTRATIVE RULES

TAKE NOTICE that the Board of Addiction Counseling Examiners will hold a public hearing to address proposed amendments to and repeal of rules in N.D. Admin. Code title 4.5 at 1:00 PM until 2:00 PM on Thursday, November 20, 2008, at the Fort Lincoln Room, State Capitol, Bismarck, ND. The purpose of the proposed amendments is to establish requirements for licensure and special registration. The proposed amendments address the initial licensure and fees, clinical training program, reciprocity, and specialized registration. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the Board of Addiction Counseling Examiners at 2900 East Broadway Avenue, Suite 3, PO Box 975, Bismarck, ND 58502-0975. A copy of the proposed rules may be requested by writing the above address or calling 701-255-1439. Written or oral comments on the proposed rules sent to the above address or telephone number and received by November 30, 2008 will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Board of Addiction Counseling Examiners at the above telephone number or address at least 5 days prior to the public hearing.

Dated this 14<sup>th</sup> day of October, 2008.

Nikki Owings,  
Board Administrator

# NORTH DAKOTA BOARD OF ADDICTION COUNSELING EXAMINERS

PO Box 975 . Bismarck, ND 58502 . 701.255.1439  
www.ndbace.org . Fax: 701.224.9824 . ndbace@aptnd.com

October 14, 2008

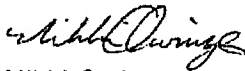
North Dakota Newspaper Association  
1435 Interstate Loop  
Bismarck, ND 58503-0567

Please send the enclosed public notice to each official county newspaper for publication one time as soon as possible. Note that the publication of the notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of [between three inches [7.62 centimeters] and four inches [10.16 centimeters]]. Please also note that the notice must include a headline describing the general topic of the proposed rules.

Please send the billings along with the Affidavits of Publication to North Dakota Board of Addiction Counseling Examiners, PO Box 975, Bismarck, ND 58502-0975.

Thank you for your assistance.

Sincerely,



Nikki Owings  
Board Administrator

Enclosure

**ABBREVIATED NOTICE OF INTENT TO AMEND AND REPEAL  
ADMINISTRATIVE RULES RELATING TO THE BOARD OF ADDICTION  
COUNSELING EXAMINERS**

TAKE NOTICE that the Board of Addiction Counseling Examiners will hold a public hearing to address proposed changes to the N.D. Admin. Code at 1:00 PM until 2:00 PM on Thursday, November 20, 2008, at the Fort Lincoln Room, State Capitol, Bismarck, ND.

A copy of the proposed rules may be obtained by writing the Board of Addiction Counseling Examiners at NDBACE, PO Box 975, Bismarck, ND 58502-0975 or calling 701-255-1439. Also, written comments may be submitted to NDBACE, PO Box 975, Bismarck, ND 58502-0975 until November 30, 2008. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Board of Addiction Counseling Examiners at the above telephone number or address at least 5 days prior to the public hearing.

Dated this 14<sup>th</sup> day of October, 2008.

Nikki Owings,  
Board Administrator

**NORTH DAKOTA BOARD OF  
ADDICTION COUNSELING  
EXAMINERS**

PO Box 975 . Bismarck, ND 58502 . 701.255.1439  
www.ndbace.org . Fax: 701.224.9824 . ndbace@aptnd.com

August 15, 2008

The Honorable Wayne Stenehjem  
Attorney General  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0040

Dear Mr. Stenehjem:

The North Dakota Board of Addiction Counseling Examiners wishes to withdraw the proposed amendments to N.D. Admin. Code Title 4.5 from your consideration at this time. The Board will resubmit a request for your consideration of any proposed amendments once the proposed amendments are determined. Please feel free to contact me with any questions you may have regarding this matter. Thank you.

Sincerely,



Nikki Owings  
Board Administrator



# NORTH DAKOTA BOARD OF ADDICTION COUNSELING EXAMINERS

PO Box 975 . Bismarck, ND 58502 . 701.255.1439  
www.ndbace.org . Fax: 701.224.9824 . ndbace@aptnd.com

June 19, 2008

The Honorable Wayne Stenehjem  
Attorney General  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0040

Dear Mr. Stenehjem:

The North Dakota Board of Addiction Counseling Examiners is reconsidering the proposed amendments to N.D. Admin. Code Title 4.5. The Board requests you do not proceed with the review of the rules requested in its June 5, 2008 letter until further notice from the Board. If you have any questions or concerns regarding this matter, please feel free to contact me at 701-255-1439. Thank you.

Sincerely,



Nikki Owings  
Board Administrator

# NORTH DAKOTA BOARD OF ADDICTION COUNSELING EXAMINERS

PO Box 975 . Bismarck, ND 58502 . 701.255.1439  
www.ndbace.org . Fax: 701.224.9824 . ndbace@aptnd.com

June 5, 2008

The Honorable Wayne Stenehjem  
Attorney General  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0040

Dear Mr. Stenehjem:

Enclosed please find the proposed amendments to N.D. Admin. Code title 4.5 by the Board of Addiction Counseling Examiners. The proposed rules have been approved by the Board of Addiction Counseling Examiners. In accordance with N.D.C.C. § 28-32-14, the Board of Addiction Counseling Examiners requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code. The time for review of these rules should be recorded under AG3050B (Board of Addiction Counseling Examiners).

Attached for purposes of review is a copy of the full and abbreviated Notices of Intent to Amend Administrative Rules; and Affidavit of Publication from Newspaper Association; a copy of one of the actual notices as published; a copy of the letter filing the Notice and Administrative Rules with the Legislative Council; a copy of all written comments; a copy of the written summary of each oral comment; the Board of Addiction Counseling Examiners' written record of consideration of all public comments received.

No regulatory analysis was required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.


No takings assessment was required because the rule does not limit the uses of real property.

These rules do not implement legislation from the most recent legislative session.

No small entity economic impact statement was required because none of the proposed rules will have an adverse economic impact on small entities.

No small entity regulatory analysis was required because the agency is exempt from the requirement to prepare one.

Sincerely,

  
Nikki Owings  
Board Administrator  
North Dakota Board of  
Addiction Counseling Examiners

Enclosures

**NORTH DAKOTA BOARD OF  
ADDICTION COUNSELING**  
**EXAMINERS**

PO Box 975 . Bismarck, ND 58502 . 701.255.1439  
www.ndbace.org . Fax: 701.224.9824 . ndbace@aptnd.com

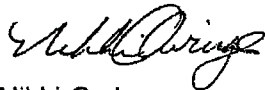
March 18, 2008

Mr. John Walstad  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard, 2<sup>nd</sup> Floor  
Bismarck, ND 58505-0360

Dear Mr. Walstad:

The Notice of Intent to Amend and Repeal Administrative Rules and a copy of the proposed rules are enclosed as required by N.D.C.C. § 28-32-10(1).

Sincerely,



Nikki Owings  
Board Administrator

Enclosures

**NOTICE OF INTENT TO AMEND AND REPEAL ADMINISTRATIVE RULES**

TAKE NOTICE that the Board of Addiction Counseling Examiners will hold a public hearing to address proposed amendments to and repeal of rules in N.D. Admin. Code title 4.5 at 10:00 AM until 12:00 PM on Thursday, April 24, 2008, at the Sakakawea Room, State Capitol, Bismarck, ND. The purpose of the proposed amendments is to establish requirements for licensure and special registration. The proposed amendments address the initial licensure and fees, clinical training program, reciprocity, and specialized registration. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000.

The proposed rules may be reviewed at the office of the Board of Addiction Counseling Examiners at 2900 East Broadway Avenue, Suite 3, PO Box 975, Bismarck, ND 58502-0975. A copy of the proposed rules may be requested by writing the above address or calling 701-255-1439. Written or oral comments on the proposed rules sent to the above address or telephone number and received by May 4, 2008 will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Board of Addiction Counseling Examiners at the above telephone number or address at least 5 days prior to the public hearing.

Dated this 18<sup>th</sup> day of March, 2008.

Nikki Owings,  
Board Administrator

# NORTH DAKOTA BOARD OF ADDICTION COUNSELING EXAMINERS

PO Box 975 . Bismarck, ND 58502 . 701.255.1439  
www.ndbace.org . Fax: 701.224.9824 . ndbace@aptnd.com

March 18, 2008

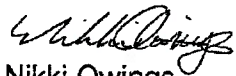
North Dakota Newspaper Association  
1435 Interstate Loop  
Bismarck, ND 58503-0567

Please send the enclosed public notice to each official county newspaper for publication one time as soon as possible. Note that the publication of the notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of [between three inches [7.62 centimeters] and four inches [10.16 centimeters]]. Please also note that the notice must include a headline describing the general topic of the proposed rules.

Please send the billings along with the Affidavits of Publication to North Dakota Board of Addiction Counseling Examiners, PO Box 975, Bismarck, ND 58502-0975.

Thank you for your assistance.

Sincerely,



Nikki Owings  
Board Administrator

Enclosure

**ABBREVIATED NOTICE OF INTENT TO AMEND AND REPEAL  
ADMINISTRATIVE RULES RELATING TO THE BOARD OF ADDICTION  
COUNSELING EXAMINERS**

TAKE NOTICE that the Board of Addiction Counseling Examiners will hold a public hearing to address proposed changes to the N.D. Admin. Code at 10:00 AM until 12:00 PM on Thursday, April 24, 2008, at the Sakakawea Room, State Capitol, Bismarck, ND.

A copy of the proposed rules may be obtained by writing the Board of Addiction Counseling Examiners at NDBACE, PO Box 975, Bismarck, ND 58502-0975 or calling 701-255-1439. Also, written comments may be submitted to NDBACE, PO Box 975, Bismarck, ND 58502-0975 until May 4, 2008. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Board of Addiction Counseling Examiners at the above telephone number or address at least 5 days prior to the public hearing.

Dated this 18<sup>th</sup> day of March, 2008.

Nikki Owings,  
Board Administrator