

JAN 04 2000

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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-170

AN ORDER to repeal Psy 4.02 (4) (b) 1. and 2.; and to create Psy 2.14, relating to continuing education and temporary practice.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

12-05-00 RECEIVED BY LEGISLATIVE COUNCIL.
01-03-01 REPORT SENT TO AGENCY.

RNS:DD:tlu;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

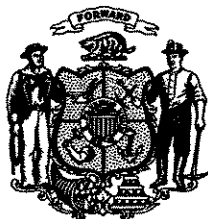
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-170

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

The board's interpretation of "working day," as used in s. 455.03, Stats., is open to question. While it is conceded that the phrase may be subject to varying interpretations, the language of the statute and its legislative history suggest that an argument can be made that the term refers to a standard, eight-hour workday. Under that interpretation, reference to a "working day" is equivalent to eight hours.

Had the Legislature intended that working day be interpreted as "any portion of a calendar day in which the psychologist provides services in this state," as proposed in the rule, it would have been a simple matter to write the statutes as the rule interprets it. Further, 1989 Wisconsin Act 243 revised the statute by changing the prior references to 60 days and 20 days to 60 "working" days and 20 "working" days. This is indication that the Legislature intended to refer to 60 and 20 "eight-hour" days. It is suggested that the board thoroughly review legislative history and consider possible legislative intent in this regard.

2. Form, Style and Placement in Administrative Code

a. The last sentence of the first full paragraph in the department's analysis is awkward and should be redrafted.

b. It is assumed that SECTION 2 intends to repeal Psy 4.02 (4) (b) in its entirety. If so, the treatment clause should state: "Psy 4.02 (4) (b) is repealed."

5. Clarity, Grammar, Punctuation and Use of Plain Language

The analysis indicates that "60 working days" might be interpreted as meaning "4,870 hours." Is this a typographical error? Is "480 hours" intended?



Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

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December 5, 2000

TO: Ron Sklansky, Director
Rules Clearinghouse
Wisconsin Legislative Council
1 East Main Street, Suite 401

FROM: Pamela A. Haack, Paralegal
Office of Administrative Rules
Department of Regulation and Licensing
Room 171, 1400 East Washington Avenue
(608) 266-0495

RE: Proposed Rule-Making Order of the Psychology Examining Board

Attached please find a proposed rule-making order of the Psychology Examining Board submitted under s. 227.15, Wis. Stats. These proposed rules relate to temporary practice and continuing education. The proposed order contains citations to the statutory authority under which the board intends to adopt the proposed rules and a description of the effect of the proposal.

Please stamp or sign a copy of this letter to acknowledge receipt. Please call me at 266-0495 if I can be of any assistance to the Clearinghouse in reviewing this rule.

Thank you.

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 00-)

PROPOSED ORDER

An order of the Psychology Examining Board to repeal Psy 4.02 (4) (b) 1. and 2., and to create Psy 2.14, relating to continuing education and temporary practice.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2) and 455.08, Stats.

Statutes interpreted: ss. 455.03 and 455.065, Stats.

There has been confusion in the past related to the temporary practice provision of the psychological practice act, with persons practicing under the provision seeking to clarify whether "60 working days" means 4,870 hours or 60 calendar days. Also causing confusion is the situation where an out-of-state psychologist provides some services to a patient at a time when both are located within this state and some services to that patient when the patient is located in Wisconsin and the psychologist is located in his or her state of licensure. The proposed rule would be considered to be practicing in Wisconsin any time that the patient is located in this state. } *awk*

Under s. 455.03, Stats., a psychologist who is licensed in another state may offer services as a psychologist in this state for not more than 60 working days in any year without holding a Wisconsin license. The objective of the rule would be to clarify that a "working day" is any day in which any psychological services are provided, regardless of the number of hours in that day that practice occurs. The rule would also make it clear that practice occurs in Wisconsin any time that the patient is located in Wisconsin, even if the out-of-state psychologist is located in his or her state of licensure and is providing the services by electronic or telephonic means. } *authority*

Clearinghouse Rule 98-206 repealed and recreated the continuing education rules for purposes of simplification and the convenience of licensees. The previous rules establishing the requirements for approval of continuing education had evolved in a somewhat disorganized manner and were confusing to licensees and difficult for the board to administer. The board repealed and recreated the rule to remedy that situation by clarifying and simplifying the approval process. Due to a clerical oversight, s. Psy 4.02 (4) (a) was repealed, but s. Psy 4.02 (4) (b) remained in place. The objective of this rule is to correct that oversight. } *authority*

455.03
'89 Act 243
'89 AB220

TEXT OF RULE

SECTION 1. Psy 2.14 is created to read:

Psy 2.14 Temporary practice. The following apply to the temporary practice of psychology by a psychologist who is licensed or certified by a similar examining board of another state or territory of the United States or of a foreign country or province who offers services as a psychologist in this state under s. 455.03, Stats. :

(1) Any portion of a calendar day in which the psychologist provides services in this state is considered one working day.

(2) A psychologist provides psychological services in this state whenever the patient or client is located in this state, regardless of whether the psychologist is temporarily located in this state or is providing services by electronic or telephonic means from the state where the psychologist is licensed.

SECTION 2. Psy 4.02 (4) (b) 1. and 2. are repealed.

(assume want (intro) repealed too)

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Chairperson
Psychology Examining Board

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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12/5/00

FEB 26 2001

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 00-170)

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the PSYCHOLOGY EXAMINING BOARD is submitting in final draft form rules relating to continuing education and temporary practice.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

**STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 00-170
PSYCHOLOGY EXAMINING BOARD : (s. 227.19 (3), Stats.)**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

There has been confusion in the past related to the temporary practice provision of the psychological practice act, with persons practicing under the provision seeking to clarify whether "60 working days" means 480 hours or 60 calendar days. Also causing confusion is the situation where an out-of-state psychologist provides some services to a patient at a time when both are located within this state and some services to that patient when the patient is located in Wisconsin and the psychologist is located in his or her state of licensure. The proposed rule would make it clear both that "working day" means calendar day, and that the psychologist would be considered to be practicing in Wisconsin any time that the patient is located in this state.

Under s. 455.03, Stats., a psychologist who is licensed in another state may offer services as a psychologist in this state for not more than 60 working days in any year without holding a Wisconsin license. The objective of the rule would be to clarify that a "working day" is any day in which any psychological services are provided, regardless of the number of hours in that day that practice occurs. The rule would also make it clear that practice occurs in Wisconsin any time that the patient is located in Wisconsin, even if the out-of-state psychologist is located in his or her state of licensure and is providing the services by electronic or telephonic means.

Clearinghouse Rule 98-206 repealed and recreated the continuing education rules for purposes of simplification and the convenience of licensees. The previous rules establishing the requirements for approval of continuing education had evolved in a somewhat disorganized manner and were confusing to licensees and difficult for the board to administer. The board repealed and recreated the rule to remedy that situation

by clarifying and simplifying the approval process. Due to a clerical oversight, s. Psy 4.02 (4) (a) was repealed, but s. Psy 4.02 (4) (b) remained in place. The objective of this rule is to correct that oversight.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on January 12, 2001. There were no appearances at the hearing, nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Response to Comment 1:

In the clearinghouse comments to this rule, which interprets "working day" for the purposes of s. 455.03, Stats., as any day in which an out-of-state psychologist provides services in this state, the clearinghouse suggests that an examination of legislative intent militates for the conclusion that working day means a standard eight-hour day. Disregarding for the moment the fact that psychologist do not work standard eight-hour days, the suggested interpretation is suggested neither by the legislative history nor by logic.

The clearinghouse cites to the revision in 1989 Wisconsin Act 243, changing the previous reference to 60 days and 20 days to 60 working days and 20 working days, as suggesting that the legislature intended the reference to be to full working days. The more logical interpretation of the change is that the legislature intended that days were to be excluded in which the out-of-state psychologist was located in Wisconsin but during which no services were provided.

More to the point, if a working day is to be interpreted as eight working hours, do we exclude any day in which the psychologist provides services for only seven hours? If so, then the out-of-state psychologist could establish a permanent practice in Wisconsin without seeking licensure here merely by adjusting his or her hours to ensure that he or she practiced as many as eight hours per day only 60 days in any one year.

The remaining recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 00-170)

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(1) Any portion of a calendar day in which the psychologist provides services in this state is considered one working day.

(2) A psychologist provides psychological services in this state whenever the patient or client is located in this state, regardless of whether the psychologist is temporarily located in this state or is providing services by electronic or telephonic means from the state where the psychologist is licensed.

SECTION 2. Psy 4.02 (4) (b) is repealed.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

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Psychology Examining Board

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2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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2/26/01