



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 15-035

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

In the rule summary, the board should describe its authority to prohibit a person who holds an inactive license under s. 454.06 (8m), Stats., from performing any work in the practice for compensation. Section 454.06 (8m) (d), Stats., permits a person to perform work in the practice for which that person holds an inactive license if that work is minimal, as determined by the department. However, s. Cos 8.03 (1) and (2) appears to only permit activities for which compensation is not received.

2. Form, Style and Placement in Administrative Code

a. Section Cos 2.045 (1m) provides examples of settings in which personal care services may not take place. The board should consider moving this content to a note. [s. 1.09 (1), Manual.]

b. The purpose of proposed s. Cos 8.03 (2) appears to be to clarify the proposed s. Cos 8.03 (1) by using examples. The board should consider moving the contents of proposed s. Cos 8.03 (2) to a note. [s. 1.09 (1), Manual.]

c. Proposed s. Cos 9.03 (3) refers to a “licensee”, which is a term defined by s. Cos 1.01 (10). The board should consider replacing this term with the word “person”. Additionally, the board should consider moving the content of proposed s. Cos 9.03 (3) to a note because s. 454.04 (1) (a) to (d), Stats., already prohibit a person from engaging in cosmetology, aesthetics, electrology, or manicuring if the person does not hold a current license for that activity. [s. 1.09 (1), Manual.]

d. Proposed s. Cos 3.01 (10) (Note), the board should cite the statutory reference as “Section 106.52 (1) (fm), Stats.,”.

e. Proposed s. Cos 11.04 (1) (e) does not form a complete sentence with the introductory material in s. Cos 11.04 (1). [s. 1.03 (3), Manual.]

f. Proposed s. Cos 11.04 (1) (e) uses the phrase “shall refrain from”, but the prohibitions should be expressed either as “No person may...” or “A person may not...”. [s. 1.01 (2), Manual.]

3. Conflict With or Duplication of Existing Rules

a. Section Cos 2.045 (1m) appears to duplicate the requirements of s. Cos 2.045 (1).

b. Section Cos 4.04 (1m) requires all establishments to supply licensees with at least one antiseptic, and s. Cos 4.04 (1) requires that all work stations shall be supplied with at least one antiseptic. Does the board consider these requirements to be duplicative?

c. The title of s. Cos 9.03 is “Late renewal and reinstatement”, and the title of s. Cos 9.03 (1) is “Late Renewal”. This may cause confusion with the existing title of s. Cos 9.02, which is “Late Renewal”.

4. Adequacy of References to Related Statutes, Rules and Forms

Section Cos 4.01 (3g) refers to “a disinfectant as defined in s. Cos 1.01 (6e)”; “disinfectant” is defined in s. Cos 1.01 (6).

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

a. Section Cos 2.045 (1m) uses the plural form “persons”; this should be changed to the singular “person”.

b. In s. Cos 4.01 (3r), the board should consider replacing the words “such as” with the word “including”.

c. The board should consider clarifying which activities are prohibited by proposed s. Cos 8.03 (1). Proposed s. Cos 8.03 (1) prohibits a person who has been granted an inactive license from receiving compensation for “personal care services performed by a licensee”. It is unclear whether compensation may be received for personal care services as long as the services are not performed by a licensee. It is also unclear whether the prohibition applies to compensation received for services performed by the person who has an inactive license, for services performed by another person, or both.

The proposed rule also states that a person with an inactive license “may not practice in a licensed establishment”. It is unclear which services are included in “practice”. If the rule is intended to prohibit the practice of cosmetology, this would prohibit different activities than prohibiting “personal care services”.

d. Proposed s. Cos 9.03 (2) refers to a “licensee”, which is a term defined by s. Cos 1.01 (10). The board should consider mirroring the language of s. Cos 9.02 by replacing “licensee” with “applicant”.

e. Proposed s. Cos 9.03 (2) states that a licensee may “apply to have the license reinstated in accordance with all of the following:” and then pars. (a) to (c) list types of evidence. It is unclear whether the licensee must submit with the application each type of evidence listed, or if the license is only to be reinstated if the board finds evidence of the factors listed in pars. (a) to (c). Additionally, given the reference to “unmet” disciplinary requirements in the introductory material, under what circumstances would the content of par. (b) not apply?

f. Proposed s. Cos 9.03 (2) (a) applies “if the credential has not been active within the last 5 years”. It is unclear whether this includes instances in which an inactive license has been issued pursuant to s. 454.06 (8m), Stats.

g. In s. Cos 11.04 (5) (b), what distinction does the board intend by replacing “working days” with “business days” with regard to its filing deadline?