

**STATE OF WISCONSIN
BOARD OF NURSING**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
BOARD OF NURSING : CR 13-097
:**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

None

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The purpose of the proposed rule is to update and modernize the misconduct or unprofessional conduct rule which has not been updated since 1985. The Board utilized the recently adopted model rules of the National Council of State Boards of Nursing and the rules of the surrounding states.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Board of Nursing held a public hearing on December 19, 2013. The following people either testified at the hearing, or submitted written comments:

Gina Dennik-Champion representing the Wisconsin Nurses Association
Judy Warmuth representing the Wisconsin Hospital Association
Jeremy Levin representing the Rural Wisconsin Health Cooperative

The Board of Nursing summarizes the comments received either by hearing testimony or by written submission as follows:

Mr. Levin and Ms. Warmuth expressed the need for more review by stakeholders and did not indicate their specific concerns with the draft language. In addition, Ms. Warmuth was concerned about the specificity of violations.

Ms. Dennik-Champion expressed concern from her membership regarding the drastic change in format and inclusion of itemized violations.

The Board of Nursing invited those making public comments to a special meeting to work through any concerns. Ms. Dennik-Champion attended the meeting and is now supportive of the rule. The Board of Nursing explains modifications to its rule-making proposal prompted by public comments as follows:

- In N 7.03(4)(e)4 changed the word “impaired” to “compromised”.
- Removal of N 7.03(4)(e)8. and 9. relating to financial agreements. This did result in a renumbering from the preliminary rules draft.
- Removal of N 7.03(6)(d) relating to failing to supervise student experiences as a clinical nursing instructor. This did result in a renumbering from the preliminary rules draft.
- In N 7.03(6)(j) changed “with supervisor” to “for clinical care beyond scope of practice”.
- Added N 7.03(7)(d)

The Board expressed to public that the reason for more detailed itemization in the rule was to ensure the licensees and public know what constitutes a violation. There are also a couple areas in the rule where the Board wanted to spell out what is not included.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 5e: In s. N 7.03(1)(i), in the second sentence, should the word “require” be replaced with the word “authorize”?

Response: The words “require” and “authorize” have two separate meanings. The Board would like to be clear that this provision does not require a person to report treatment information.

Comment 5g: In s. N 7.03(3), the term “dignity” requires definition.

Response: The Board declines to define the word and believes the common and plain meaning of the word is clear.

Comment 5q: In s. N 7.03(4)(f)3., what is the intended result if the patient gives consent (for example, asks the nurse to take a picture of the patient and a visitor).

Response: This provision is included in the sexual misconduct provision and as such the Board does not believe the example stated of a patient consenting to a picture being taken with a visitor would be considered sexual misconduct.

Comment 5r: In s. N 7.03(4)(f), for clarity the department should consider removing the vague term “seductive conduct” or defining it.

Response: The Board declines to define the word and believes the common and plain meaning of the word is clear.

Comment 5t: In s. N 7.03(6)(c), more clarity is required, and the department should consider adding a reasonableness standard. For example: “...acceptable nursing practice, if the departure or failure may create unreasonable risk or danger...”.

Response: The Board disciplines based upon the minimal standards of the profession and not a reasonableness standard.

Comment 5x: In s. N 7.03(6)(n), the word “discriminating” requires definition. In some cases, it may be appropriate to treat individuals differently based on some of these criteria, for example, because of risk factors associated with age or gender.

Response: The Board declines to define the word because discrimination has a clear legal meaning. In the example provided treating individuals differently based on risk factors associated with age or gender is not discriminating but individualizing their treatment.

Comment 5y: In s. N 7.03(8)(d), more clarity is required. Is a harmless error a violation?

Response: A harmless error is a violation. The Board disciplines based upon minimal competence and standards and not based upon actual harm.

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

None