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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee for Review of Administrative Rules ...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

**STATE OF WISCONSIN  
BARBERING AND COSMETOLOGY EXAMINING BOARD**

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**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : BARBERING AND COSMETOLOGY  
BARBERING AND COSMETOLOGY : EXAMINING BOARD  
EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 10-014)**

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TO: Senator Jim Holperin, Senate Co-Chairperson  
Joint Committee for the Review of Administrative Rules  
Room 409 South, State Capitol  
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the BARBERING AND COSMETOLOGY EXAMINING BOARD is submitting in final draft form rules relating to examinations for barbers and cosmetologists, aestheticians, electrologists, manicurists, and managers.

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.

Thank you.

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**STATE OF WISCONSIN  
BARBERING AND COSMETOLOGY EXAMINING BOARD**

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**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE  
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 10-014  
BARBERING AND COSMETOLOGY : (s. 227.19 (3), Stats.)  
EXAMINING BOARD :**

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**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:**

The department finds that the proposed rule will have no significant fiscal impact. The department also finds that this rule has no significant fiscal effect on the private sector.

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

The provisions of ch. BC 7 are outdated and are no longer effective based upon the current manner in which examinations are typically administered. The goal of this rule is to create changes to ch. BC 7 to amend or redact various provisions so as to update the rule provisions so they appropriately and adequately reflect the present examination process and bring the rules into conformity with current national and state practice.

Currently, ch. BC 7 calls for methods and requirements that can no longer be met based upon national and state changes in how, and by whom, examinations are conducted. Specifically, there are provisions that call for examination reviews upon examination failure that cannot be accomplished due to the proprietary interests examination vendors have in the examinations. Similarly, there are provisions that require an immediate conference by two examiners to discuss the suspected failing examinee's performance, as well that a written description for the failure be provided.

**V. NOTICE OF PUBLIC HEARING:**

A public hearing was held on May 3, 2010.

Marvin Rushing appeared asking about the minimum passing score difference between the licensee and the apprentice. In response to that question, the board indicated that the

rule had been rewritten to allow the board the flexibility to modify the scoring aspect to ensure that someone failing two-thirds of the examination would not receive a license.

There was no other testimony presented and no written comments were received.

Guests at the May 3, 2010 board meeting were:

Barb McCormick, Southwest Technical College; Mary Kardoskee; Mary Kiley; Diane Pandl, Institute of Beauty & Wellness; JoAnn Schneider, Empire Education Group; Tia Lea Spangler and Anthony Norris, Sue Kolve Salon Spa; Sharon Frenz, Fusion Hair & Nail Studio; Penny Nelson, Salon Professional Academy; Vijay T. Gino's; Sandy Brietzman and Haveezah Ahmed, Department of Workforce Development; and Andrew Schumacher, Salon Management, Inc.

## **VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

**Comment 5.a.** There are multiple interpretations based on the structure of SECTION 1 of the rule. It appears that the intent behind s. BC 7.01 is to allow the board to choose between accepting examinations both conducted in-house and by a test service provider. The way it is written, it is not clear that this is the intent. The following issues are raised:

(1) Section BC 7.01 (1) could be read to mean that if the board chooses to engage in one of the three listed activities (prepare, administer, or grade examinations,) the board must engage in all three, as the word "and" is used. Is it the intent that the board engage in all three activities if it only wants to engage in one?

**Response:** The word "and" has been changed to the word "or."

(2) It is unclear what the phrase, "approve, in whole or in part," means. First, what is the purpose of the board "approving" the examinations? Is the purpose to "approve for licensure" an examination that was taken by a test service provider? Is the purpose to allow the board to administer exams prepared by a test service provider? Second, what does "in whole or in part" mean? Does it mean that the provider can engage in one or two of the three items listed (prepare, administer, or grade exams) if the board does the others? For example, can the provider administer or grade board-approved exams? If the board only approves "part" of the three items a test service provider could do (i.e. prepare, administer, or grade exams), it is unclear what happens to the other items.

**Response:** This provision is necessary as circumstances may arise where an examination may have been prepared and/or administered/graded by a service provider, yet for some technical or other reason there is error. In those instances the board will have to have the authority not to approve (accept) that examination.

**Comment 5.b.** The plain language analysis claims that the right to request an appeal was moved from ss. BC 7.07 and 7.08 to s. BC 7.01 (2). However, neither the right to request

an appeal nor the authority of the board to review an examination is listed in s. BC 7.01 (2).

**Response:** “The right to request an appeal was moved to s. BC 7.01 (2)” has been stricken from the analysis. This provision is not needed because it is the procedural process after examination review and there are no longer examination reviews.

**Comment 5.c.** The plain language analysis states that review of examination questions needed to be repealed as the questions themselves are proprietary intellectual property. It appears that the board already has the authority to review exam questions under s. BC 7.01. It is unclear why the board claims s. BC 7.07 should be repealed on the grounds of proprietary intellectual property. The board should consider providing more detail as to why the exams can be approved by the board, but may not be reviewed by the board.

**Response:** Given that the department uses vendors for examinations, there is no way the board could comply with this requirement. These provisions are outdated and were applicable when the department developed and administered its own examinations. That is no longer the case.

## **VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:**

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

STATE OF WISCONSIN  
BARBERING AND COSMETOLOGY EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : BARBERING AND COSMETOLOGY  
BARBERING AND COSMETOLOGY : EXAMINING BOARD  
EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 10-014)

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PROPOSED ORDER

An order of the Barbering and Cosmetology Examining Board to repeal BC 7.03 (3), 7.04 (2) to (5), 7.07, 7.08 and 7.09 (3); to renumber BC 7.09 (2); to renumber and amend BC 7.04 (1) and 7.09 (4); to amend BC 7.02 (2), 7.03 (1) (title), (1), (2), and 7.05; and to repeal and recreate BC 7.01, 7.02 (1) and 7.06, relating to examinations for barbers and cosmetologists, aestheticians, electrologists, manicurists, and managers.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

**Statutes interpreted:**

Section 454.06 (2) (c), (3) (d), (4) (c), (5) (c) and (6) (c), Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 454.06 (2) (c), (3) (d), (4) (c), (5) (c) and (6) (c), Stats.

**Explanation of agency authority:**

The Barbering and Cosmetology Examining Board is granted the authority under ss. 454.06 (2) (c), (3) (d), (4) (c), (5) (c) and (6) (c), and 454.07, Stats., to conduct examinations as a requirement for licensure.

**Plain language analysis:**

This proposed rule-making amends ch. BC 7, Examinations, to modify some of the provisions to conform to current practice and to clean up redundant language to make the rules easier to read and use.

SECTION 1 repeals a section that specified detailed requirements for the scheduling and administration of the required examinations. The section is recreated to allow the board to prepare, administer or grade examinations or to approve an examination prepared,

administered and graded by a test service provider. The section also requires the board to ensure there is an appeal process for applicants who fail the examination.

SECTION 2 repeals a provision that simply said examinations shall test for entry level competence. It is recreated to require the board to determine the subject matters that will be tested and to design the test for minimum competence.

SECTION 3 amends the current requirement that the board furnish upon request information describing the competencies that will be tested. The board will now be required to make that information generally available.

SECTION 4 combines into one provision the requirement that an applicant for a barber or cosmetologist, aesthetician, electrologist, or manicurist license is required to take a written and practical examination. This section also amends a provision to make it clear that a manager must only complete a written examination.

SECTION 5 repeals the provisions that became unnecessary after its substance was combined into one section in SECTION 4.

SECTION 6 combines into one provision the requirement that a passing score shall be based on the board's determination of what is minimum competence.

SECTION 7 repeals the provisions that became unnecessary after its substance was combined into one section in SECTION 6.

SECTION 8 amends a provision to grant the board the authority to deny a license or to withhold an examination score to an applicant who gives or receives unauthorized assistance during the examination.

SECTION 9 repeals a provision that requires two examiners to confer before issuing a failing score in the practical examination and that required the board to provide the examinee with a written description of the reasons for that failure. This section is recreated to require the board to provide an applicant a score report which will include a listing of content areas and corresponding examination scores.

SECTION 10 repeals two provisions, the first of which is the section that contained specific requirements to be followed when an applicant requested a review of a failed examination. The provision provided that applicants could review the examination and write comments, questions or claims of error regarding any question in the examination. Those notes had to remain with the proctor to be used later at a potential hearing. The board was required to review the applicant's claims. The second repealed provision contained the process by which an applicant would appeal and ultimately request a hearing on a claim of error.

The provisions allowing review of examination questions had to be repealed because the questions themselves are proprietary intellectual property under law. Given that the

department uses vendors for examinations, there is no way the board could comply with this requirement. These provisions are outdated and were applicable when the department developed and administered its own examinations. That is no longer the case.

SECTION 11 rennumbers a provision to make the order of the rule provisions follow in a logical manner.

SECTION 12 repeals a provision that conflicted with the current s. BC 7.09 (3).

SECTION 13 clarifies that the rule that scores of retake examinations be combined with examination parts previously posted is applicable to all applicants and not just barbers and cosmetologists. This includes the substance of the provision repealed in SECTION 12.

**Summary of, and comparison with, existing or proposed federal regulation:**

There is no existing or proposed federal regulation.

**Comparison with rules in adjacent states:**

**Illinois:**

Statutes and rules for barbering and cosmetology are found in Illinois Administrative Code Title 168 Part 1175 (see:

<http://www.ilga.gov/commission/jcar/admincode/068/0680117sections.html>). The provisions are silent on the issues outlined herein.

**Iowa:**

Statutes and rules for barbering and cosmetology are found in Iowa Code Chapter 157 Cosmetology and Chapter 158 Barbering:

<http://coolice.legis.state.ia.us/CoolICE/default.asp?category=billinfo&service=IowaCode&ga=82=#157.3>.

<http://coolice.legis.state.ia.us/CoolICE/default.asp?category=billinfo&service=IowaCode&ga=82=#158.3>

Iowa Administrative Code Chapter 21 Barbering & Chapter 60 Cosmetology:

[http://search.legis.state.ia.us/NXT/gateway.dll/IowaState/iac\\_6/a645iac\\_a645\\_c60v1.pdf](http://search.legis.state.ia.us/NXT/gateway.dll/IowaState/iac_6/a645iac_a645_c60v1.pdf)

[http://search.legis.state.ia.us/NXT/gateway.dll/IowaState/iac\\_6/a645/iac\\_a645\\_c21v1.pdf](http://search.legis.state.ia.us/NXT/gateway.dll/IowaState/iac_6/a645/iac_a645_c21v1.pdf)

There are no provisions regarding the means by which passing scores shall be determined, failure of practical examinations or examination review.

**Michigan:**

Statutes and rules for Barbering and Cosmetology are found in:

**Cosmetology Law Book:** <http://www.dleg.state.mi.us/bcsc/forms/cos/coslawbk.pdf>

**Barbering Law Book:** <http://www.dleg.state.mi.us/bcsc/forms/barb/bclawbk.pdf>



There are no provisions regarding the means by which passing scores shall be determined, failure of practical examinations or examination review.

### **Minnesota:**

Statutes and rules for Barbering and Cosmetology are found in:  
Minnesota Statutes 2007 Chapter 154.003-154.26 Barbers & 154.40-154.54 Cosmetology  
[https://www.revisor.leg.state.mn.us/bin/getpub.php?pubtype=STAT\\_CHAP&year=curre  
nt&chapter](https://www.revisor.leg.state.mn.us/bin/getpub.php?pubtype=STAT_CHAP&year=current&chapter) and

Barber Rules Chapter 2100 & Cosmetology Rules Chapters 2105 and 2110  
<https://www.revisor.leg.state.mn.us/data/revisor/rule/current/2100/2100.pdf>

<https://www.revisor.leg.state.mn.us/data/revisor/rule/current/2105/2105.pdf>

There are no provisions in the cosmetology laws on the issues outlined herein.

**Barber Rule 2100.3000** outlines the requirements for examination grading and requires that the grading criteria for the written part be established at the time each examination is written (and as such, may vary), however, there is a minimum passing score of 55. The practical examination requires a minimum passing score of 75 (on a 100 point scale) for the haircut and oral portions of the examination and a minimum of 75 for the remaining portions of the examination. Failure to meet the minimum of any of these three requirements constitutes failure of the whole and requires retesting after completion of two additional months and 300 additional hours of practice.

**Barber Rule 2100.0700** addresses examination grading for barber apprentices. The rules and requirements mirror those set for barbers, however, the minimum passing score is 70.

**Barber Rule 2100.3200** relates to failed examinations and requires an apprentice who fails to satisfactorily pass an examination for a certificate of registration to practice as a registered barber to practice an additional two months and 300 hours to be eligible to retake the examination.

### **Summary of factual data and analytical methodologies:**

The comparison information with the rules in adjacent states was obtained directly from contact with those states via email or telephone correspondence, as well as a survey and review of their laws and rules. Additionally, information was obtained from examination specialists within the department relative to changes in the industry related to the examination process. Specifically, many states, including Wisconsin, have gone from creating and administering their own examinations "in house," to the national trend of using examination vendors who create the examination, maintain all proprietary interests in the examination, and then serve as a vendor to administer the examination.

Additional consideration was given to the age of the rules as they presently exist, the shortcomings presented by the rules which no longer accurately reflect current practices, as well as other challenges created by current provisions. The last consideration

contributing to the proposed changes relate to examination scoring. Under the rules as they presently exist, an applicant is able to fail two-thirds (2/3) of the examination and still be eligible to receive an unrestricted license to practice.

The proposed changes here are a result of all of the above information and considerations, and are designed to remedy the identified problems.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:**

The proposed rule changes will have no fiscal effect at all. The changes are remedial in nature and relate only to administrative measure untied to any fiscal expenditure.

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

**Anticipated costs incurred by private sector:**

The department finds that this rule has no significant fiscal effect on the private sector.

**Fiscal estimate:**

The department finds that the proposed rule will have no significant fiscal impact.

**Effect on small business:**

These proposed rules were reviewed and discussed by the department’s Small Business Review Advisory Committee and determined that the rules will not have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at [hector.colon@drl.state.wi.us](mailto:hector.colon@drl.state.wi.us), or by calling (608) 266-8608.

**Agency contact person:**

Pamela Haack, Paralegal, Department of Regulation and Licensing, Division of Board Services, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov). Comments must

be received on or before May 3, 2010, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. BC 7.01 is repealed and recreated to read:

**BC 7.01 Administration.** The board may do any of the following:

(1) Prepare, administer or grade examinations.

(2) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

SECTION 2. BC 7.02 (1) is repealed and recreated to read:

**BC 7.02 Competency tested.** (1) The board shall determine the subject matters for each license and design the examinations to test for minimum competence in the subjects tested.

SECTION 3. BC 7.02 (2) is amended to read:

BC 7.02 (2) The board shall ~~furnish to individuals upon request~~ make available general information describing the competencies upon which the examination is based.

SECTION 4. BC 7.03 (1) (title), (1) and (2) are amended to read:

**BC 7.03 Form of examination.** (1) (title) ~~BARBER AND COSMETOLOGIST PRACTITIONER~~. An applicant for licensure as a barber or cosmetologist, aesthetician, electrologist or manicurist shall complete a written examination and ~~each part of a practical examination which includes the following parts: haircut, chemical waving, chemical relaxing, thermal curling, tint and shampoo (one part), and blow drying.~~

(2) MANAGER. An applicant for licensure as a manager shall complete a written examination.

SECTION 5. BC 7.03 (3) is repealed.

SECTION 6. BC 7.04 (1) is renumbered BC 7.04 and is amended to read:

**BC 7.04 Passing scores.** ~~(title) BARBER AND COSMETOLOGIST. The applicant's score shall be the average of the written examination and each part of the practical examination.~~ The passing score of the examinations for licensure as a barber and cosmetologist, aesthetician, manicurist, electrologist or manager, shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. ~~The board shall make the determination after~~

~~consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.~~

SECTION 7. BC 7.04 (2) to (5) are repealed.

SECTION 8. BC 7.05 is amended to read:

**BC 7.05 Unauthorized assistance.** The board may ~~withhold the score of~~ deny a license to an applicant who gives or receives unauthorized assistance during the examination or withhold the applicant's score and may schedule the applicant for reexamination at a future time at the applicant's expense.

SECTION 9. BC 7.06 is repealed and recreated to read:

**BC 7.06 Practical examination score reports.** The board shall provide to an applicant a report of the reasons for failure of an examination.

SECTION 10. BC 7.07 and 7.08 are repealed.

SECTION 11. BC 7.09 (2) is renumbered BC 7.09 (3).

SECTION 12. BC 7.09 (3) is repealed.

SECTION 13. BC 7.09 (4) is renumbered BC 7.09 (2) and is amended to read:

BC 7.09 (2) Scores of retake examinations ~~for barbering and cosmetology practitioners~~ shall be combined with examination parts previously passed to determine the score for the entire examination.

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(END OF TEXT OF RULE)  
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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  
Barbering and Cosmetology  
Examining Board



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### 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 10-014

AN ORDER to repeal BC 7.03 (3), 7.04 (2) to (5), 7.07, 7.08, and 7.09 (3); to renumber BC 7.09 (2); to renumber and amend BC 7.04 (1) and 7.09 (4); to amend BC 7.02 (2), 7.03 (1) and (2), and 7.05; and to repeal and recreate BC 7.01, 7.02 (1), and 7.06, relating to examinations for barbers and cosmetologists, aestheticians, electrologists, manicurists, and managers.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

02-05-2010 RECEIVED BY LEGISLATIVE COUNCIL.

02-26-2010 REPORT SENT TO AGENCY.

RNS:MS

**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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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Legislative Council Deputy Director

### CLEARINGHOUSE RULE 10-014

#### 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 September 2008.]**

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

a. There are multiple interpretations based on the structure of SECTION 1 of the rule. It appears that the intent behind s. BC 7.01 is to allow the board to choose between accepting examinations both conducted in-house and by a test service provider. The way it is written, it is not clear that this is the intent. The following issues are raised:

- (1) Section BC 7.01 (1) could be read to mean that if the board chooses to engage in one of the three listed activities (prepare, administer, or grade examinations), the board must engage in all three, as the word “and” is used. Is it the intent that the board engage in all three activities if it only wants to engage in one?
- (2) It is unclear what the phrase, “approve, in whole or in part,” means. First, what is the purpose of the board “approving” the examinations? Is the purpose to “approve for licensure” an examination that was taken by a test service provider? Is the purpose to allow the board to administer exams prepared by a test service provider? Second, what does “in whole or in part” mean? Does it mean that the provider can engage in one or two of the three items listed (prepare, administer, or grade exams) if the board does the others? For example, can the provider administer or grade board-prepared exams? If the board only approves “part” of the three items a test service provider could do (i.e. prepare, administer, or grade exams), it is unclear what happens to the other items.

b. The plain language analysis claims that the right to request an appeal was moved from ss. BC 7.07 and 7.08 to s. BC 7.01 (2). However, neither the right to request an appeal nor the authority of the board to review an examination is listed in s. BC 7.01 (2).

c. The plain language analysis states that review of examination questions needed to be repealed as the questions themselves are proprietary intellectual property. It appears that the board already has the authority to review exam questions under s. BC 7.01. It is unclear why the board claims s. BC 7.07 should be repealed on the grounds of proprietary intellectual property. The board should consider providing more detail as to why the exams can be approved by the board, but may not be reviewed by the board.