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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 94-222

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 October 1994.]

1. Statutory Authority

Section 455.08, Stats., requires the Examining Board to establish a reasonable code of ethics governing the professional conduct of psychologists, using as a model the “Ethical Standards of Psychologists” established by the American Psychological Association. Based on the department’s analysis to the rule, there is no way of knowing whether the Examining Board complied with this statutory requirement in promulgating the rule and to what extent the rule is based on the ethical standards.

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

a. The rule would be improved if the terms “sexual contact,” “sexual conduct” and “behavior which could reasonably be construed as seductive” were defined. Note that the term “sexual contact,” which arguably is the least vague of the three terms, is defined for purposes of statutory civil and criminal liability for sexual contact with a client by a therapist. See ss. 895.70 (1) (d) and 940.22 (1) (g), Stats., which reference s. 940.225 (5) (b), Stats. The difficulty of defining the terms “sexual conduct” and “behavior which could reasonably be construed as seductive” is recognized; however, it is suggested that the Examining Board consider defining those terms (and “sexual contact”) if it has not already given the issue consideration. The department might examine the statutory definitions of “sexual conduct” in ss. 134.46 (1) (e), 450.155 (1) (j) and 944.21 (2) (e), Stats.

b. Would it be helpful to indicate, in a note to the rule, that the standards set forth in the rule both overlap with and differ from statutory provisions relating to civil and criminal liability

for sexual contact with a client and briefly summarize how the rule and the statutory provisions compare?

c. The department's analysis describes what the rule attempts to accomplish but fails to summarize the substance of the rule.

d. It is assumed that the rule applies prospectively. A note regarding the initial applicability of the rule may be helpful.