



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 14-041

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 November 2011.]

2. Form, Style and Placement in Administrative Code

a. Because s. 1.01 (7) (b), Manual, specifies that substantive provisions should not be included in definitions, the board may wish to clarify the actual prohibition against unprofessional conduct either by additional rule text or by statutory reference.

b. Generally, the organizational style of s. MTBT 5.02 should conform to s. 1.03, Manual.

c. In s. MTBT 5.02 (2), “s.” should be replaced by “ss.”.

d. Throughout s. MTBT 5.02, internal cross-references such as “paragraph” should be reviewed. In particular, it appears the references to “paragraph” often may be more appropriately referred to as “subsection”.

e. Section MTBT 5.02 (11) appears to restrict impairment to use of “habit-forming” drugs. If all drugs causing impairment are to be included, “habit-forming” should be stricken.

f. Section MTBT 5.02 (15) (a) should read “Sexual nature of contact or conduct shall be determined...” to eliminate motivation as an element and specify that the totality of circumstances is to be used in all cases, if that is the intent of the rule. Additionally, in s. MTBT 5.02 (15) (intro.), and elsewhere in the proposed rule, use of “may” and “shall” should be reviewed for consistency and alignment with the board’s intent. Also, s. MTBT 5.02 (15) (d) does not appear to relate to pars. (a) to (c), and should be placed elsewhere in the rule text.

g. Section MTBT 5.02 (19) should enumerate specific standards, if such standards exist.

- h. Section MTBT 5.02 (21) contains two unnecessary commas in the last sentence.
- i. Section MTBT 5.02 (24) should replace “whether” with “whether or not” or “if”, depending upon intent. The phrase “or whether or not” should be replaced by “and whether or not”.
- j. In s. MTBT 5.04, the text regarding audits should be clarified. Does the board intend to conduct audits of all licensees, or a random audit of any licensee?

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

- a. Section MTBT 5.02 (1) should specify which sections of ch. 448, Stats., apply to massage therapists and bodywork therapists.
- b. Section MTBT 5.02 (2) is vague with regard to the standard of proof for determining that there has been unprofessional conduct. “Being convicted of” would be a standard of proof of conduct that constitutes a violation. Section MTBT 5.02 (25) contains a similar issue.
- c. In s. MTBT 5.02 (23), the board should provide a cross-reference to the specific rules or statutes relating to continuing education.

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

- a. In the section of the rule analysis titled, “Analysis and supporting documents...”, the section should begin with “These”.
- b. In s. MTBT 5.02 (7), “False” should not be capitalized.
- c. Section MTBT 5.02 (8) and (16) should read “Failing to maintain...” and “Falsifying client records.” for consistency of tense within the section.