



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 19-109

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

Section AT 2.06 (2) of the rule text provides that if a licensee applies for a renewal after five years: “...the board shall make such inquiry as it finds necessary to determine whether the applicant is competent to practice under the license in this state. Subject to s. 440.08 (3) (b), Stats., the board shall impose any reasonable conditions on the renewal of the license as the board deems appropriate.”.

This approach to rulemaking is not authorized under ch. 227, Stats., because it requires the use of additional standards, criteria, and conditions not included in the rule. In other words, the standards and criteria used by the agency to determine “competency” and the conditions imposed on renewal would have the effect of law. Accordingly, they are required to be promulgated as rules. [See s. 227.10, Stats., *Cholvin v. Department of Health and Family Services*, 2008 WI App 127.] This provision should be expanded to include the specific standards, criteria, and conditions that would be used by the agency. They could mirror, wholly or partially, the standards and criteria used to grant the initial license. [See s. 448.953, Stats.] However, as noted by the agency, the rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements for the initial license. [s. 440.08 (3) (b), Stats.]

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

a. Section AT 2.06 (1) of the rule text refers to “evidence required under s. 448.955 (2), Stats.”. Did the agency intend not to refer to certain requirements under s. 448.955 (3), Stats., such

as the statement signed by the licensee and the licensee's consulting physician? The reference could be changed to refer to the entirety of s. 448.955, Stats., or to refer to both subs. (2) and (3) of the statute.

b. Section AT 2.06 (3) (a) of the rule text refers to "evidence of completion of the requirements under sub. (2)". Should s. AT 2.06 (3) also refer to s. 448.955, Stats., as described in the above comment? In addition, the wording in s. AT 2.06 (3) should be revised to match the wording used in s. AT 2.06 (1): "of the completion of the requirements" should be deleted and replaced with the word "required". Also the term "completion" is not accurate in this context because several of the statutory provisions contain ongoing requirements.