



## CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE  
27TH ASSEMBLY DISTRICT

January 27, 1997

To: The Members  
Assembly Committee on Consumer Affairs

From: Representative Clifford Otte, Chair *C.O.*

### MEMO

On January 23, 1997, the following clearinghouse rule was referred to the Assembly Committee on Consumer Affairs:

Clearinghouse Rule 95-217, relating to standards of conduct.

The deadline for committee action on this rule is **February 22, 1997**. If you would like a copy of the rule, please contact my office. If you are interested in requesting a hearing and/or submitting comments, please do so prior to the deadline date.

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

---

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : BARBERING AND COSMETOLOGY  
BARBERING AND COSMETOLOGY : EXAMINING BOARD ADOPTING RULES  
EXAMINING BOARD : (CLEARINGHOUSE RULE 95-217)**

---

TO: Ben Brancel  
Speaker of the Assembly  
119 Martin Luther King Jr., Blvd.  
Room LL2  
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the BARBERING AND COSMETOLOGY EXAMINING BOARD is submitting in final draft form proposed rules relating to standards of conduct.

If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

---



Tommy G. Thompson  
Governor

Marlene A. Cummings  
Secretary

1400 E. WASHINGTON AVENUE  
P.O. BOX 8935  
MADISON, WISCONSIN 53708-8935  
(608) 266-2112

# Administrative Rules in Final Draft Form

## Barbering and Cosmetology Examining Board

**Rule: BC 2.03 (7)**

**Relating to:  
Standards of Conduct**

**Clearinghouse Rule:  
No. 95-217**

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers, Marriage and Family Therapists and Professional Counselors; and Veterinary.

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

---

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE  
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 95-217  
BARBERING AND COSMETOLOGY : (s. 227.19 (3), Stats.)  
EXAMINING BOARD :**

---

**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:**

These rules will have no significant impact upon state or local units of government.

**IV. STATEMENT EXPLAINING NEED:**

In this proposed rule-making order the Barbering and Cosmetology Examining Board creates s. BC 2.03 (7) to clarify that sexual harassment or sexual assault of a patron, former patron, employe, employer, or co-worker, is a violation of the practice standards of the profession and is a basis for disciplinary action.

**V. NOTICE OF PUBLIC HEARING:**

A public hearing was held on February 5, 1996. Mary Dalton, Milwaukee, representing LaQuita's School of Barbering and Cosmetology, and Thomas Holman, Milwaukee, representing the United Cosmetology Association and the Wisconsin Cosmetology Association, both appeared and registered in support of the proposed rules.

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

All of the recommendations suggested in the Clearinghouse Report were accepted in whole.

**VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:**

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

STATE OF WISCONSIN  
BARBERING AND COSMETOLOGY EXAMINING BOARD

---

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : BARBERING AND COSMETOLOGY  
BARBERING AND COSMETOLOGY : EXAMINING BOARD ADOPTING RULES  
EXAMINING BOARD : (CLEARINGHOUSE RULE 95-217)

---

PROPOSED ORDER

An order of the Barbering and Cosmetology Examining Board to create BC 2.03 (7) relating to standards of conduct.

Analysis prepared by the Department of Regulation and Licensing.

---

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 and 440.03 (1) and (1m), Stats.

Statutes interpreted: s. 454.15 (2) (i), Stats.

In this proposed rule-making order, the Barbering and Cosmetology Examining Board creates s. BC 2.03 (7) to clarify that sexual harassment or sexual assault of a patron, former patron, employe, employer, or co-worker, is a violation of the practice standards of the profession and is a basis for disciplinary action.

---

TEXT OF RULE

SECTION 1. BC 2.03 (7) is created to read:

BC 2.03 (7) Licensees shall not engage in sexual harassment or sexual assault of a patron, former patron, employe, employer, or co-worker. In this section, "sexual harassment" and "sexual assault" have the meanings defined in ss. 111.32 (13), 940.225 (1), (2), (3) and (3m) and 948.02 (1) and (2), Stats.

Note: Section 111.32 (13) defines sexual harassment as "...unwelcome sexual advances, unwelcome requests for sexual favors, unwelcome physical contact of a sexual nature or unwelcome verbal or physical conduct of a sexual nature or unwelcome verbal or physical conduct of a sexual nature. 'Sexual harassment' includes conduct directed by a person at another person of the same or opposite gender. 'Unwelcome verbal or physical conduct of a sexual nature' includes but is not limited to the deliberate, repeated making of unsolicited gestures or comments of a sexual nature; the deliberate, repeated display of offensive sexually graphic materials which is not necessary for business purposes; or deliberate verbal or physical conduct of a sexual nature, whether or not repeated, that is sufficiently severe to interfere substantially

with an employe's work performance or to create an intimidating, hostile or offensive work environment."

-----  
(END OF TEXT OF RULE)  
-----

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

FISCAL ESTIMATE

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

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

g:\rules\bc2.03  
1/8/97

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

***RULES CLEARINGHOUSE***

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



David J. Stute, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

---

**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 95-217**

AN ORDER to create BC 2.03 (7), relating to standards of conduct.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

12-04-95 RECEIVED BY LEGISLATIVE COUNCIL.  
01-02-96 REPORT SENT TO AGENCY.

RS:DLS:jt;lah

**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)]

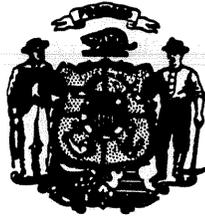
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



David J. Stute, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## CLEARINGHOUSE RULE 95-217

### 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.]

#### 2. Form, Style and Placement in Administrative Code

In the second sentence, "section" should be "subsection" and, in the third sentence, "employee" should be "employee." In the fourth sentence, "employees" should be "employees."

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

a. This rule should be rewritten to more specifically delineate the type of sexual conduct that is a violation, especially since the statutes provide the necessary language that can be cross-referenced. For example, the rule could provide that the following, among others, are violations of practice standards: sexual assault as described in s. 940.225 (the general sexual assault statute) or 948.02, Stats. (sexual assault of a child). Note that the provision would not say a conviction of any of these offenses is required, but merely that the activity as described and defined in those sections would amount to a violation of practice standards. Criminal and other provisions in the statutes should be reviewed to determine what other statutory descriptions of prohibited sexual conduct or harassment should be referenced in this rule provision. Again, the rule does not require a conviction or even a criminal charge that the person engaged in this type of conduct, but only that, using the proof standards and procedures applicable to any other disciplinary action, such conduct as so described took place. An amended rule could provide much greater notice (due process) than just stating that licensees must refrain from "engaging in sexual contact, exposure, gratification, or other sexual behavior" or that "sexual harassment of co-workers or employees" is a violation of practice standards. There are current statutory definitions and descriptions relating to the type of conduct being dealt with and these should be reviewed. The

board also should review the practice standards of other boards to determine if there is a model on which to base its rule.

b. In the third sentence of the rule, why is the phrase "prior or current" used? Is the intent of this phrase to apply the provision to "sexual assaults" of patrons which occurred prior to the effective date of the rule? It is difficult to determine what exactly is intended here.

c. The board may want to separate out sexual conduct, such as sexual contact, and sexual harassment into separate subsections and provide a better description of the type of conduct which is a violation of practice standards (perhaps, along the lines of the suggestions in par. a., above).