



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

February 11, 1997

To: The Members
Assembly Committee on Consumer Affairs

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

MEMO

On February 11, 1997, the following clearinghouse rule was referred to the Assembly Committee on Consumer Affairs:

Clearinghouse Rule 96-173, relating to standards of conduct.

The deadline for committee action on this rule is March 11, 1997. A copy of the rule is attached. If you are interested in requesting a hearing and/or submitting comments, please do so by **March 3**.

**STATE OF WISCONSIN
HEARING AND SPEECH EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : HEARING AND SPEECH EXAMINING
HEARING AND SPEECH : BOARD ADOPTING RULES
EXAMINING BOARD : (CLEARINGHOUSE RULE 96-173)**

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

PLEASE TAKE NOTICE that the HEARING AND SPEECH EXAMINING BOARD is submitting in final draft form proposed rules relating to the grounds for discipline for individuals who are credentialed as speech-language pathologists and audiologists.

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



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

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Governor

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Secretary

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Administrative Rules in Final Draft Form

Hearing and Speech Examining Board

Rule: HAS 6.09

**Relating to:
Grounds for Discipline**

**Clearinghouse Rule:
No. 96-173**

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.

Committed to Equal Opportunity in Employment and Licensing

STATE OF WISCONSIN
HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 96-173
HEARING AND SPEECH : (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 Hearing and Speech Examining Board is amending s. HAS 6.09 (2) (o) to eliminate the prohibition of individuals who are credentialed as speech-language pathologists and audiologists not being able to evaluate patients by correspondence, thus allowing a credential holder to review fax or computer records and make recommendations on treatment. This change is consistent with the advent of more modern and sophisticated types of electronic transmission of data. The amendment made by this proposed rule-making order allows credential holders to evaluate solely by correspondence, but may not treat solely by correspondence.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on December 2, 1996. There were no appearances at the public hearing, nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Clearinghouse Rule 92-187 created Chapter HAS 6, effective June 1, 1993. One of the comments in the Clearinghouse Report relating to that chapter was that s. HAS 6.09 (2) is a definition and should be so styled. The report went on and proposed the following language for the introduction: "In this section, 'conduct in the practice of speech-language pathology or audiology which evidences a lack of knowledge or ability to apply professional principles or skills' includes:...", which the Hearing and Speech Examining

Board adopted. This proposed rule-making order does not make any changes to that introductory clause, but rather amends s. HAS (2) (o) to indicate that "treating solely by correspondence is prohibited."

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

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

STATE OF WISCONSIN
HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : HEARING AND SPEECH EXAMINING
HEARING AND SPEECH : BOARD ADOPTING RULES
EXAMINING BOARD : (CLEARINGHOUSE RULE 96-173)

PROPOSED ORDER

An order of the Hearing and Speech Examining Board to amend HAS 6.09 (2) (o) relating to the grounds for discipline for individuals who are credentialed as speech-language pathologists and audiologists.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats.

Statutes interpreted: s. 459.34 (2) (b), Stats.

In this proposed rule-making order the Hearing and Speech Examining Board is amending s. HAS 6.09 (2) (o) to eliminate the prohibition of individuals who are credentialed as speech-language pathologists and audiologists not being able to evaluate patients by correspondence, thus allowing a credential holder to review fax or computer records and make recommendations on treatment. This change is consistent with the advent of more modern and sophisticated types of electronic transmission of data. This proposed amendment allows credential holders to evaluate patients solely by correspondence, but may not treat solely by correspondence. Advice was received from the Council on Speech-Language Pathology and Audiology concerning this proposed rule.

TEXT OF RULE

SECTION 1. HAS 6.09 (2) (o) is amended to read:

HAS 6.09 (2) (o) ~~Evaluating or treating~~ Treating solely by correspondence.

(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
Hearing and Speech 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.

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1/23/97

WISCONSIN LEGISLATIVE COUNCIL STAFF



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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 96-173

AN ORDER to amend HAS 6.09 (2) (o), relating to the grounds for discipline for individuals who are credentialed as speech-language pathologists and audiologists.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

11-01-96 RECEIVED BY LEGISLATIVE COUNCIL.
12-02-96 REPORT SENT TO AGENCY.

RS:DD;jt;ksm

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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CLEARINGHOUSE RULE 96-173

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

a. The department's analysis cites s. 440.035 (1), Stats., as the statute being interpreted. Is not s. 459.34 (2) (b), Stats., being interpreted? The incorrect citation may be a result of the current style of s. HAS 6.09. The rule which Clearinghouse Rule 96-173 affects, s. HAS 6.09 (2) (o), is part of a definition of "conduct in the practice of speech-language pathology or audiology which evidences a lack of knowledge or ability to apply professional principles or skills." [See s. HAS 6.09 (2) (intro.).] However, the defined phrase is not used in s. HAS 6.09. Presumably, the defined term is for purposes of s. 459.34 (2) (b), Stats. Under s. HAS 6.09 (1) (g), a violation of that statutory provision is grounds for discipline. [Note, also, that s. HAS 6.09 (1) (g) refers twice to ch. HAS 6 -- "this chapter" or "ch. HAS 6."] The Examining Board may wish to clarify the relationship of s. HAS 6.09 (2) to s. HAS 6.09 (1).

b. The rule does not indicate whether the advice of the Council on Speech-Language Pathology and Audiology was received concerning the proposed rule. [See s. 459.23, Stats.]

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

The department's analysis: (a) fails to indicate which credential holders the rule addresses; and (b) fails to indicate that the current prohibition is on evaluating patients solely by correspondence. Presumably, the change made by the rule allows credential holders to evaluate patients solely by correspondence. The analysis should be clarified in this regard. Also, the analysis appears to indicate that a credential holder will be able to evaluate by correspondence

“and make recommendations on treatment.” How does this comport with the remaining rule prohibition against treatment solely by correspondence? The analysis should not mislead a credential holder into making “recommendations on treatment” based solely on fax or computer records.