

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

*Joint Committee for  
Review of  
Administrative Rules  
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤ 97hr\_JCR-AR\_CRule\_98-115

➤ Committee Hearings ... CH

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➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤

➤ Hearing Records ... HR

➤

➤ Miscellaneous ... Misc

➤

➤ Record of Comm. Proceedings ... RCP

➤

98-115-HAS(R&L) HEARING AID

***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946



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

**Richard Sweet**  
Assistant Director  
(608) 266-2982

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

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**CLEARINGHOUSE REPORT TO AGENCY**

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[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 98-115**

AN ORDER to repeal HAS 1.01 (1) and (2a) and (b), 2.01 (4) (b) and 6.09 (2) (h) and (i); to renumber and amend HAS 1.01 (2a) (intro.) and (a), 2.01 (4) (a) and 6.05; to amend HAS 1.01 (5n), 3.02 (5), 6.02 (intro.), (2) and (3), 6.06 (3), 6.08 (2) (b) and 7.02; to create HAS (4s), (4t), (6a), (6b) and (8a), 6.04 (8), 6.05 (2), 6.06 (1) (e) and (f), 6.07 (1) (d), 6.09 (1a), 7.03 (1) (d) and (2) (c) and 7.05 (1) (a) 4. and (2) (a) 3. and chapter HAS 8, relating to continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations and unlicensed practice.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

08-17-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-15-98 REPORT SENT TO AGENCY.

RS:DD;jal;rv

**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 98-115

### 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 September 1998.]**

#### I. Statutory Authority

a. Is s. HAS 6.07 (1) (d) consistent with s. 459.28, Stats.? Reciprocity depends on whether the requirements for licensure in the other jurisdiction are substantially equivalent to Wisconsin's requirements. Presumably, if they are substantially equivalent in the other jurisdiction, there is no need, or authority, to require the applicant to pass the practical examination.

b. The revision to s. HAS 7.02 is arguably inconsistent with SEC. 25 (2) of 1997 Wisconsin Act 49. The revision permits a hearing instrument specialist to avoid the 20-hour continuing education requirement in the year 2000, delaying the requirement to 2001. Had the Legislature intended that result, it appears the result could have been specifically provided for in Act 49. In this regard, see also s. HAS 7.03 (1) (d).

c. Sections 459.095 (3) and 459.25 (5m) (a) 3., Stats., require that rules be promulgated to require each person granted a license to practice as a hearing instrument specialist, a speech-language pathologist or an audiologist to complete a specified continuing education program or course of study to ensure competence with respect to a matter related to the license if the department or the examining board has received a significant number of consumer complaints about the matter or if the examining board otherwise determines there is need for such a requirement. The rule does not make clear whether the continuing education requirements contained in ch. HAS 8 are a response to a "significant number of consumer complaints" or if it has been determined that there is a need for continuing education. A rationale for the creation of ch. HAS 8 should be provided in the analysis to the rule in order to support the statutory authority for the imposition of the new continuing education requirement.

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

a. The department's "analysis" fails to provide a brief summary of the rule as required by s. 227.14 (2) (a), Stats. The analysis merely gives a very general description of the subject matter of the rule; it conveys no information about the substance of the rule.

b. In s. HAS 6.02 (intro.), it is unnecessary to strike "In" and add "As used in." In addition, the necessity for the reference to ch. 459, Stats., in the introductory clause is unclear.

c. The numbering of the subsections created by the treatment clause of SEC. 9 leaves no room for future insertions. For example, it is suggested that subs. (4s) and (4t) be subs. (4m) and (4r), respectively.

d. Since "hearing aid" is already a defined statutory term, why isn't the term "hearing aid" used rather than "hearing instrument"? See s. HAS 6.02 (4t) and (6a), for example.

e. In s. HAS 6.05 (2) (intro.), the phrase "all of" should be inserted after the word "pass."

f. The title to s. HAS 8.01 refers to authority and "purpose." The text of the section makes no reference to the purpose of the rules in ch. HAS 8.

g. In s. HAS 8.03 (1), "Every" should be "A."

h. It is suggested that the sequence of s. HAS 8.03 (2) and (3) be reversed. In addition, reference in sub. (2) to "may be applied only to the biennial registration period in which the continuing education hours are required" is awkward. Can the subsection be stated more clearly?

i. In s. HAS 8.04 (1), it appears that "program" should follow "education."

j. Section HAS 8.04 (2) (intro.) is drafted as if the paragraphs that follow are considerations rather than requirements. However, the provisions appear to be requirements and sub. (6) refers to them as such. It appears that the introductory clause should be redrafted.

k. In s. HAS 8.04 (2) (a), it appears that the second "of" should be "or."

l. In s. HAS 8.04 (4), it appears that the use of "courses of study" is not consistent with the definition. The definition refers to course work completed *at* a college or university.

m. In s. HAS 8.04 (5), "if" should be substituted for "provided that."

n. In s. HAS 8.04 (6), it appears that insertion of "one or more hours" following the first "of" should be considered.

o. In s. HAS 8.05 (1), "if licensees are" should be replaced by "if a licensee is."

p. In s. HAS 8.05 (2), "is not" should replace "will not be."

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

a. Note that statutory references in existing rules not treated by the rule may need attention as a result of the statutory numbering changes made by 1997 Wisconsin Act 49. See, for example, untreated provisions of ch. HAS 1.

b. In s. HAS 6.04 (8), it appears the statutory reference should be replaced by a reference to s. HAS 6.05 (2) (b), instead. In general, the rules should be reviewed to determine if a statutory reference can be made more direct by referencing, instead, the pertinent Wisconsin Administrative Code reference.

c. In the provisions of SECS. 20 through 23 of the rule, it is suggested that the rule provision that imposes the continuing education requirement be cross-referenced.

d. In s. HAS 8.05 (1), it appears that the reference to s. 459.24 (5m) (b), Stats., should be to s. 459.24 (5m) b. 3., Stats.

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

a. In s. HAS 6.05 (2) (a), note that the reference to “written verification of clinical competence” does not include reference to verification “received directly from ASHA.” Compare s. HAS 6.05 (1).

b. In s. HAS 6.06 (1) (e) and (f), reference to a temporary “permit” appears inconsistent with statutory terminology. Compare s. 459.24 (6), Stats.

c. In the last sentence of s. HAS 6.06 (3), it is unclear what the clause “if the applicant shows, to the satisfaction of the board, sufficient cause for the renewal” means, given the definition of “sufficient cause” and the context. For example, does it mean that because of illness or other hardship, the applicant was unable to take a required examination? Or pass a required examination? If the latter, does the applicant still have to apply to take the next available examination?

d. The reason for the repeal of s. HAS 6.09 (2) (h) and (i) is not apparent.

STATE OF WISCONSIN  
HEARING AND SPEECH EXAMINING BOARD

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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 98- )

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PROPOSED ORDER

An order of the Hearing and Speech Examining Board to *repeal* HAS 1.01 (1), (2a) and (b), 2.01 (4) (b) and 6.09 (2) (h) and (i); to *renumber and amend* HAS 1.01 (2a) (intro.) and (a), 2.01 (4) (a) and 6.05; to *amend* HAS 1.01(5n), 3.02 (5), 6.02 (intro.), (2) and (3), 6.06 (3), 6.08 (2) (b) and 7.02; to *create* HAS (4s), (4t), (6a), (6b) and (8a), 6.04 (8), 6.05 (2), 6.06 (1) (e) and (f), 6.07 (1) (d), 6.09 (1a), 7.03 (1) (d) and (2) (c), 7.05 (1) (a) 4. and (2) (a) 3. and ch. HAS 8, relating to continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations and unlicensed practice.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 459.095, (1) and (3) and 459.24 (5m) (a) 1. and 3., Stats., as amended by 1997 Wisconsin Act 49.

Statutes interpreted: ss. 459.09, 459.24, 459.26, 459.32 and 459.34, Stats.

1997 Wisconsin Act 49 requires the Hearing and Speech Examining Board to promulgate rules establishing continuing education requirements; initial and renewal of credentials, temporary practices; requirements relating to the fitting of hearing instruments by audiologists; creation of practical examinations to test for proficiency in the fitting of hearing instruments; restrictions relating to the use of titles, initials and designations; unlicensed practice; and other minor and technical changes.

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TEXT OF RULE

SECTION 1. HAS 1.01 (1) is repealed. 02

SECTION 2. HAS 1.01 (2a) (intro.) and (a) are renumbered HAS 1.01 (2a) and amended to read:

HAS 1.01 (2a) "Direct supervision" means: ~~For purposes of supervising individuals other than audiology students,~~ being physically present at the time the trainee makes ear impressions or measurements of human hearing for the purpose of fitting or selling a hearing instrument or fits or sells a hearing instrument.

SECTION 3. HAS 1.01 (2a) (b) is repealed. *see 2.01(4)*

SECTION 4. HAS 1.01 (5n) is amended to read:

HAS 1.01 (5n) "Sufficient cause" means ~~continued participation in a supervised course of study leading to a degree in audiology at a college or university,~~ illness or other hardship.

SECTION 5. HAS 2.01 (4) (a) is renumbered HAS 2.01 (4) and amended to read:

HAS 2.01 (4) ~~Except as provided in par. (b), only~~ No more than one trainee at any given time may hold a trainee permit to practice the fitting of hearing instruments under the direct supervision of a given licensee.

SECTION 6. HAS 2.01 (4) (b) is repealed. *ok*

SECTION 7. HAS 3.02 (5) is amended to read:

HAS 3.02 (5) Chapters HAS 1 to 5 8.

SECTION 8. HAS 6.02 (intro.), (2) and (3) are amended to read:

HAS 6.02 DEFINITIONS. (intro.) ~~In~~ As used in this chapter and in ch. 459, Stats.:

(2) "Audiologist" has the meaning given in s. ~~459.40 (1)~~ 459.20 (1), Stats.

(3) "Audiology" has the meaning given in s. ~~459.40 (2)~~ 459.20 (2), Stats.

SECTION 9. HAS 6.02 (4s), (4t), (6a), (6b) and (8a) are created to read:

HAS 6.02 (4s) "Employee" means an individual employed directly by a speech-language pathologist or audiologist ~~or an individual employed by an entity which employs or contracts with a speech-language pathologist or audiologist to provide services relating to the practice of~~ speech-language pathology or audiology.

(4t) "Hearing instrument" means a hearing aid as defined in s. 459.20 (3g), Stats.

*not 49 define hearing aid*

(6a) "Practice of fitting and dealing in hearing instruments" means the practice of fitting and dealing in hearing aids, as defined in s. 459.20 (3p), Stats.

(6b) "Sell" or "sale" has the meaning given in s. 459.20 (3t), Stats.

(8a) "Sufficient cause" means illness or other hardship.

SECTION 10. HAS 6.04 (8) is created to read:

HAS 6.04 (8) Evidence satisfactory to the board that the applicant has passed the practical examination required under s. 459.26 (2) (b), Stats., or has completed education or training that the board determines is substantially equivalent to the completion of the examination.

SECTION 11. HAS 6.05 is renumbered HAS 6.05 (1) and amended to read:

HAS 6.05 EXAMINATIONS. (1) An applicant for licensure as a speech-language pathologist shall pass the NESPA examination required by ASHA for certification or submit written verification of clinical competence received directly from ASHA. ~~An applicant for licensure as an audiologist shall pass the NESPA examination required by ASHA for certification or submit written verification of clinical competence from ASHA.~~

SECTION 12. HAS 6.05 (2) is created to read:

HAS 6.05 (2) An applicant for licensure as an audiologist shall pass the following examinations:

(a) The NESPA examination required by ASHA for certification or submit written verification of clinical competence from ASHA.

(b) The practical examination required under s. 459.26 (2) (b), Stats., or submit evidence of completion of education or training that the board determines is substantially equivalent to completing the examination.

SECTION 13. HAS 6.06 (1) (e) and (f) are created to read:

HAS 6.06 (1) (e) If applying for a temporary permit to practice speech-language pathology, evidence satisfactory to the board that the applicant has submitted an application to take the next available examination for licensure as a speech-language pathologist required under s. 459.26 (2) (a), Stats.

(f) If applying for a temporary permit to practice audiology, evidence satisfactory to the board that the applicant has submitted an application to take the next available examination for licensure as an audiologist required under s. 459.26 (2) (a) and (b), Stats.

SECTION 14. HAS 6.06 (3) is amended to read:

HAS 6.06 (3) A temporary license ~~may be issued~~ is valid for a period designated by the board, not to exceed 9 months ~~and~~. A temporary license granted by the board to practice speech-language pathology may be renewed once, at the discretion of the board. A temporary license granted to practice audiology may be renewed once by the board if the applicant fails an examination for audiologist licensure under s. 459.26 (2) (a) or (b), Stats., and applies to take the next available examination or if the applicant shows, to the satisfaction of the board, sufficient cause for the renewal.

SECTION 15. HAS 6.07 (1) (d) is created to read:

HAS 6.07 (1) (d) Pass the practical examination required under s. 459.26 (2) (b), Stats., if applying for an audiologist license.

SECTION 16. HAS 6.08 (2) (b) is amended to read:

HAS 6.08 (2) (b) The ~~fee specified in~~ fees required under s. 440.05 (1) (b) and (2), Stats., as appropriate.

SECTION 17. HAS 6.09 (1a) is created to read:

HAS 6.09 (1a) The board may reprimand an audiologist, or deny, limit, suspend or revoke a license or permit, if it finds that the applicant, licensee or permittee has done any of the following:

(a) Violated any federal or state statute, rule or regulation that relates to the practice of fitting and dealing in hearing instruments.

(b) Failed to conduct a direct observation of the ear canal of a purchaser of a hearing instrument.

(c) Sold a hearing instrument to a person who was not given tests using appropriate procedures and instrumentation or without proper measurement of the functional intensity and range of the person's hearing.

SECTION 18. HAS 6.09 (2) (h) and (i) are repealed.

SECTION 19. HAS 7.02 is amended to read:

HAS 7.02 LICENSES. Hearing instrument specialist licenses granted under ss. 459.05 and 459.06, Stats., expire on February 1 of each ~~even-numbered~~ odd-numbered year. Except as provided in s. 459.24 (6), Stats., speech-language pathologist and audiologist licenses granted under ss. 459.24 and 459.28, Stats., expire on February 1 of each odd-numbered year.

SECTION 20. HAS 7.03 (1) (d) is created to read:

HAS 7.03 (1) (d) Certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board.

SECTION 21. HAS 7.03 (2) (c) is created to read:

HAS 7.03 (2) (c) Certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board.

SECTION 22. HAS 7.05 (1) (a) 4. is created to read:

HAS 7.05 (1) (a) 4. Certification that the applicant has completed, within the 2 years preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved or required by the board.

SECTION 23. HAS 7.05 (2) (a) 3. is created to read:

HAS 7.05 (2) (a) 3. Certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved or required by the board.

SECTION 24. Chapter HAS 8 is created to read:

## Chapter HAS 8

### CONTINUING EDUCATION REQUIREMENTS

HAS 8.01 AUTHORITY AND PURPOSE. The rules in this chapter are adopted by the hearing and speech examining board under the authority of ss. 227.11 (2), 459.095, 459.12 (1) and 459.24 (5m), Stats.

HAS 8.02 DEFINITIONS. In this chapter:

(1) "Course of study" means coursework completed at a college or university accredited by a regional or national accrediting agency recognized by the U.S. department of education.

(2) "Hour" means 60 minutes.

(3) "Licensee" means a hearing instrument specialist, audiologist or speech-language pathologist licensed by the board under ch. 459, Stats.

(4) "Program" means a seminar or course other than a course of study offered by a sponsor approved by the board.

A ✓

HAS 8.03 CONTINUING EDUCATION. (1) Every licensee shall complete at least 20 hours of board approved continuing education programs or courses of study which pertain to the practice of fitting and dealing in hearing instruments, audiology or speech-language pathology, as appropriate, in each biennial renewal period.

Note: A list of approved continuing education programs and courses of study may be obtained from the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) Except as provided under s. HAS 7.05 (1) (a) 4. and (2) (a) 3., continuing education hours may be applied only to the biennial registration period in which the continuing education hours are required.

ask ✓

Sub. 1.03

(3) To obtain credit for completion of continuing education hours, a licensee shall, at the time of each renewal, sign a statement certifying that he or she has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board.

(4) A licensee who fails to meet the continuing education requirements by the renewal date shall not practice as a hearing instrument specialist, audiologist or speech-language pathologist, as appropriate, until his or her license is restored under s. HAS 7.05.

(5) For auditing purposes, every licensee shall maintain records of continuing education hours for at least 5 years from the date the certification statement required under sub. (3) is signed.

HAS 8.04 APPROVAL OF CONTINUING EDUCATION PROGRAMS AND COURSES OF STUDY. (1) Except as provided in sub. (6), to apply for approval of a continuing education or course of study, a sponsor shall submit to the board office, at least 45 days prior to the first date the program or course of study is offered, an application on forms provided by the board and shall include the name of the sponsor, the program or course title, general description and an outline of the program or course, the dates, the location, the name and qualifications of each instructor.

Programs

Note: Application forms for approval of continuing education programs and courses of study may be obtained from the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) The following criteria <sup>shall</sup> will be considered in the approval process:

but they appear to be requirements, not considerations - cf. sub. (2)

(a) The subject matter of the program or course shall pertain to an area of topic approved or required by the board which relates to the practice of fitting and dealing in hearing instruments, audiology or speech-language pathology.

(b) The program or course sponsor shall be approved by the board.

(c) The program or course sponsor agrees to monitor the attendance, furnish a certificate of attendance to each participant and maintain records verifying attendance for at least 5 years.

(3) If a continuing education course includes subject matter other than the subject matter areas identified under sub. (2) (a), only the board approved portions of the course which relate to the areas identified under sub. (2) (a), qualify as continuing education required under this chapter.

(4) Continuing education programs or courses of study offered by alternative delivery methods such as home-study courses, self-study packages, computer courses, televideo conferencing and other methods may be approved by the board.

(5) A program or course sponsor may repeat a previously approved program or course without application, provided that the subject matter and instructor has not changed.

(6) Subject to compliance with the requirements set forth in subs. (2) to (5), the board will accept attendance at and completion of continuing education programs or courses of study approved by the American academy of audiology, American speech-language-hearing association, Wisconsin department of public instruction, international hearing society or the national board for certification in hearing instrument sciences as fulfilling one or more continuing education hours required under this chapter.

Note: The following entities may be contacted by writing to the: American Academy of Audiology (AAA), 8201 Greensboro Drive, Suite 300, McLean, Virginia, 22102; American Speech-Language-Hearing Association (ASHA), 10801 Rockville Pike, Rockville, Maryland 20852; Wisconsin Department of Public Instruction (DPI), 125 South Webster, Madison, Wisconsin 53702; and the International Hearing Society (IHS) and National Board for Certification in Hearing Instrument Sciences (NBC-HIS), 16880 Middlebelt Road, Suite 4, Livonia, Michigan 48154-3367.

**HAS 8.05 EXAMINATION.** (1) If licensees are required to complete a specified continuing education program or course of study pursuant to s. 459.095 (3) or 459.24 (5m) (b), Stats., the board shall administer an examination on the matter that is the subject of the continuing education program or course of study prior to the date the continuing education program or course of study is offered.

*Where are the rules that require specified program or course? - 459.095(3) - 459.24(5m)(b)*

is not ✓  
(2) A licensee who passes the examination administered by the board, as provided under sub. (1), will not be required to complete the continuing education hours approved by the board for the specified continuing education program or course of study.

(3) A licensee who takes the examination specified under sub. (1), shall pay the fee required under s. 440.05 (1) (b), Stats.

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(END OF TEXT OF RULE)  
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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.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

g:\rules\has2.doc  
8/14/98

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

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**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 98-115)**

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TO: Senator Robert Welch, Senate Co-Chairperson  
Joint Committee for the Review of Administrative Rules  
1 East Main Street  
Room 201  
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the HEARING AND SPEECH EXAMINING BOARD is submitting in final draft form proposed rules relating to continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations and unlicensed practice.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

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OCT 30 1998



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**

## **Hearing and Speech Examining Board**

**Rule: Chs. HAS 1, 2, 3, 6, 7 and 8**

**Relating to:  
Continuing Education, Examinations,  
Unlicensed Practice**

**Clearinghouse Rule:  
No. 98-115**

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  
HEARING AND SPEECH EXAMINING BOARD**

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**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE  
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 98-115  
HEARING AND SPEECH : (s. 227.19 (3), Stats.)  
EXAMINING BOARD :**

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS:**

Application forms for approval of continuing education programs and courses of study are being created.

**III. FISCAL ESTIMATES:**

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

**IV. STATEMENT EXPLAINING NEED:**

1997 Wisconsin Act 49 requires the Hearing and Speech Examining Board to promulgate rules establishing continuing education requirements; initial and renewal of credentials, temporary practices; requirements relating to the fitting of hearing instruments by audiologists; creation of practical examinations to test for proficiency in the fitting of hearing instruments; restrictions relating to the use of titles, initials and designations; unlicensed practice; and other minor and technical changes.

Sections 1-6. The provisions relating to practice by "audiology students" as well as the references to a "supervised course of study" are being repealed. In the past, an individual who engaged in the practice of audiology as part of a supervised course of study, including an internship or clinical practicum, leading to a degree in speech-language pathology or audiology at a college or university did not have to obtain a license as an audiologist if the individual was designated by a title which clearly indicated status as a student or trainee. However, students or trainees who engaged in the practice of fitting and dealing in hearing instruments in conjunction with the practice of audiology were required to be licensed as hearing instrument specialists or obtain trainee permits. As a result of 1997 Wisconsin Act 49, the practice of audiology now includes the practice of fitting and dealing in hearing aids; therefore, an audiology student may now engage in the practice of fitting and dealing in hearing instruments without a license or trainee permit.

Sections 10-14. The provisions contained in these sections are being amended and/or created to reflect the fact that individuals applying for licenses to practice audiology after July 1, 1998, must submit evidence satisfactory to the board that they have passed the practical examination required under s. 459.26 (2) (b), Stats., as created by 1997 Wisconsin Act 49, or evidence that they have completed education or training that the board determines is substantially equivalent to the completion of the examination.

Section 17. Section HAS 6.09 (2) (h) and (i) are being repealed. Under the current rules, failure to make referrals of patients to other health care professionals and failure to use other available resources to ensure that the highest quality service is provided, constitute grounds for discipline. The board has determined that the conduct reflected in these provisions either does not reflect the standard of practice in the profession or does not rise to a level which warrants the imposition of discipline.

Sections 18-22. The provisions in these sections contain the new continuing education requirement as created by 1997 Wisconsin Act 49. Credential holders will now be required to complete 20 hours of board approved continuing education programs or courses of study which pertain to the practice of fitting and dealing in hearing aids, audiology or speech-language pathology, as appropriate, in each biennial renewal period. As provided under proposed s. HAS 8.05, the board may require credential holders to complete a "specified continuing education program or course of study" to ensure competence with respect to a matter related to the practice of speech-language pathology, audiology or fitting and dealing in hearing aids if it receives a significant number of consumer complaints about the matter or if it otherwise determines that there is a need for such requirement.

#### **V. NOTICE OF PUBLIC HEARING:**

A public hearing was held on September 14, 1998. Meredy Hase, Waukesha, Wisconsin, representing the Wisconsin Speech Language Hearing Association appeared in support of the proposed rules. Written comments in support of the proposed rules were received from Douglas Q. Johnson, Executive Director & General Counsel, Wisconsin Alliance of Hearing Professionals, Madison, Wisconsin.

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

Comment 4.a. Note that statutory references in existing rules not treated by the rule may need attention as a result of the statutory numbering changes made by 1997 Wisconsin Act 49. See, for example, untreated provisions of ch. HAS 1.

Response: No changes to the rules are required. The only provision renumbered in 1997 Wisconsin Act 49 is s. 459.26 (2), Stats., which was renumbered to s. 459.26 (2) (a), Stats. Section 459.26 (2), Stats., which relates to an examination requirement for speech-language pathologists and audiologists, is not referenced in the rules.

Comment 5.c. In the last sentence of s. HAS 6.06 (3), it is unclear what the clause “if the applicant shows, to the satisfaction of the board, sufficient cause for the renewal” means, given the definition of “sufficient cause” and the context. For example, does it mean that because of illness or other hardship, the applicant was unable to take a required examination? Or pass a required examination? If the latter, does the applicant still have to apply to take the next available examination?

Response: The language contained in the proposed rules is identical to the language contained in s. 459.24 (6) (c), Stats., as amended by 1997 Wisconsin Act 49. In general, there are two different factors which the board may take into consideration in determining whether to renew a temporary license. The first factor relates to whether an applicant has failed an examination for licensure under s. 459.26 (2) (a) or (b), Stats., and applies to take the next available examination. The second factor relates to whether an applicant provides evidence, satisfactory to the board, of sufficient cause for the renewal. The term “sufficient cause” is defined in the proposed rules to mean illness or other hardship. Failure to take a required examination because of illness or other hardship may constitute sufficient cause for the renewal. An applicant requesting a renewal based upon “sufficient cause” is not required to establish that he or she has applied to take the next available examination.

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

## **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

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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 98-115)

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PROPOSED ORDER

An order of the Hearing and Speech Examining Board to **repeal** HAS 1.01 (1), (2a) and (b), 2.01 (4) (b) and 6.09 (2) (h) and (i); to **renumber and amend** HAS 1.01 (2a) (intro.) and (a), 2.01 (4) (a) and 6.05; to **amend** HAS 1.01(5n), 3.02 (5), 6.02 (intro.), (2) and (3), 6.06 (3) and 6.08 (2) (b); to **create** HAS 6.02 (4o), (4t), (6a), (6b) and (8a), 6.04 (8), 6.05 (2), 6.06 (1) (e) and (f), 6.09 (1a), 7.03 (1) (d) and (2) (c), 7.05 (1) (a) 4. and (2) (a) 3. and ch. HAS 8, relating to continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations and unlicensed practice.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and ss. 459.095, (1) and (3) and 459.24 (5m) (a) 1. and 3., Stats., as amended by 1997 Wisconsin Act 49.

Statutes interpreted: ss. 459.09, 459.24, 459.26, 459.32 and 459.34, Stats.

1997 Wisconsin Act 49 requires the Hearing and Speech Examining Board to promulgate rules establishing continuing education requirements; initial and renewal of credentials, temporary practices; requirements relating to the fitting of hearing instruments by audiologists; creation of practical examinations to test for proficiency in the fitting of hearing instruments; restrictions relating to the use of titles, initials and designations; unlicensed practice; and other minor and technical changes.

Sections 1-6. The provisions relating to practice by "audiology students" as well as the references to a "supervised course of study" are being repealed. In the past, an individual who engaged in the practice of audiology as part of a supervised course of study, including an internship or clinical practicum, leading to a degree in speech-language pathology or audiology at a college or university did not have to obtain a license as an audiologist if the individual was designated by a title which clearly indicated status as a student or trainee. However, students or trainees who engaged in the practice of fitting and dealing in hearing instruments in conjunction with the practice of audiology were required to be licensed as hearing instrument specialists or obtain trainee permits. As a result of 1997 Wisconsin Act 49, the practice of audiology now includes the practice of fitting and dealing in hearing aids; therefore, an audiology student may

now engage in the practice of fitting and dealing in hearing instruments without a license or trainee permit.

Sections 10-14. The provisions contained in these sections are being amended and/or created to reflect the fact that individuals applying for licenses to practice audiology after July 1, 1998, must submit evidence satisfactory to the board that they have passed the practical examination required under s. 459.26 (2) (b), Stats., as created by 1997 Wisconsin Act 49, or evidence that they have completed education or training that the board determines is substantially equivalent to the completion of the examination.

Section 17. Section HAS 6.09 (2) (h) and (i) are being repealed. Under the current rules, failure to make referrals of patients to other health care professionals and failure to use other available resources to ensure that the highest quality service is provided, constitute grounds for discipline. The board has determined that the conduct reflected in these provisions either does not reflect the standard of practice in the profession or does not rise to a level which warrants the imposition of discipline.

Sections 18-22. The provisions in these sections contain the new continuing education requirement as created by 1997 Wisconsin Act 49. Credential holders will now be required to complete 20 hours of board approved continuing education programs or courses of study which pertain to the practice of fitting and dealing in hearing aids, audiology or speech-language pathology, as appropriate, in each biennial renewal period. As provided under proposed s. HAS 8.05, the board may require credential holders to complete a "specified continuing education program or course of study" to ensure competence with respect to a matter related to the practice of speech-language pathology, audiology or fitting and dealing in hearing aids if it receives a significant number of consumer complaints about the matter or if it otherwise determines that there is a need for such requirement.

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TEXT OF RULE

SECTION 1. HAS 1.01 (1) is repealed.

SECTION 2. HAS 1.01 (2a) (intro.) and (a) are renumbered HAS 1.01 (2a) and amended to read:

HAS 1.01 (2a) "Direct supervision" means: ~~For purposes of supervising individuals other than audiology students,~~ being physically present at the time the trainee makes ear impressions or measurements of human hearing for the purpose of fitting or selling a hearing instrument or fits or sells a hearing instrument.

SECTION 3. HAS 1.01 (2a) (b) is repealed.

SECTION 4. HAS 1.01 (5n) is amended to read:

HAS 1.01 (5n) "Sufficient cause" means ~~continued participation in a supervised course of study leading to a degree in audiology at a college or university,~~ illness or other hardship.

SECTION 5. HAS 2.01 (4) (a) is renumbered HAS 2.01 (4) and amended to read:

HAS 2.01 (4) ~~Except as provided in par. (b), only~~ No more than one trainee at any given time may hold a trainee permit to practice the fitting of hearing instruments under the direct supervision of a given licensee.

SECTION 6. HAS 2.01 (4) (b) is repealed.

SECTION 7. HAS 3.02 (5) is amended to read:

HAS 3.02 (5) Chapters HAS 1 to ~~5~~ 8.

SECTION 8. HAS 6.02 (intro.), (2) and (3) are amended to read:

**HAS 6.02 Definitions.** (intro.) In this chapter ~~and in ch. 459, Stats.:~~

(2) "Audiologist" has the meaning given in s. ~~459.40 (1)~~ 459.20 (1), Stats.

(3) "Audiology" has the meaning given in s. ~~459.40 (2)~~ 459.20 (2), Stats.

SECTION 9. HAS 6.02 (4o), (4t), (6a), (6b) and (8a) are created to read:

HAS 6.02 (4o) "Employee" means an individual employed directly by a speech-language pathologist or audiologist or an individual employed by an entity which employs or contracts with a speech-language pathologist or audiologist to provide services relating to the practice of speech-language pathology or audiology.

(4t) "Hearing aid" has the meaning given in s. 459.20 (3g), Stats.

(6a) "Practice of fitting and dealing in hearing aids" has the meaning given in s. 459.20 (3p), Stats.

(6b) "Sell" or "sale" has the meaning given in s. 459.20 (3t), Stats.

(8a) "Sufficient cause" means illness or other hardship.

SECTION 10. HAS 6.04 (8) is created to read:

HAS 6.04 (8) Evidence satisfactory to the board that the applicant has passed the practical examination required under s. HAS 6.05 (2) (b), or has completed education or training that the board determines is substantially equivalent to the completion of the examination.

SECTION 11. HAS 6.05 is renumbered HAS 6.05 (1) and amended to read:

**HAS 6.05 Examinations.** (1) An applicant for licensure as a speech-language pathologist shall pass the NESPA examination required by ASHA for certification or submit written verification of clinical competence ~~received~~ transmitted directly from ASHA. ~~An applicant for licensure as an audiologist shall pass the NESPA examination required by ASHA for certification or submit written verification of clinical competence from ASHA.~~

SECTION 12. HAS 6.05 (2) is created to read:

HAS 6.05 (2) An applicant for licensure as an audiologist shall pass all of the following examinations:

(a) The NESPA examination required by ASHA for certification or submit written verification of clinical competence transmitted directly from ASHA.

(b) The practical examination required under s. 459.26 (2) (b), Stats., or submit evidence of completion of education or training that the board determines is substantially equivalent to completing the examination.

SECTION 13. HAS 6.06 (1) (e) and (f) are created to read:

HAS 6.06 (1) (e) If applying for a temporary license to practice speech-language pathology, evidence satisfactory to the board that the applicant has submitted an application to take the next available examination for licensure as a speech-language pathologist required under s. HAS 6.05 (1).

(f) If applying for a temporary license to practice audiology, evidence satisfactory to the board that the applicant has submitted an application to take the next available examinations for licensure as an audiologist required under s. HAS 6.05 (2).

SECTION 14. HAS 6.06 (3) is amended to read:

HAS 6.06 (3) A temporary license ~~may be issued~~ is valid for a period designated by the board, not to exceed 9 months ~~and~~. A temporary license granted by the board to practice speech-language pathology may be renewed once, at the discretion of the board. A temporary license granted to practice audiology may be renewed once by the board if the applicant fails an examination for audiologist licensure under s. HAS 6.05 (2), and applies to take the next

available examination or if the applicant shows, to the satisfaction of the board, sufficient cause for the renewal.

SECTION 15. HAS 6.08 (2) (b) is amended to read:

HAS 6.08 (2) (b) The ~~fee specified in~~ fees required under s. 440.05 (1) (b) and (2), Stats., as appropriate.

SECTION 16. HAS 6.09 (1a) is created to read:

HAS 6.09 (1a) The board may reprimand an audiologist, or deny, limit, suspend or revoke a license or permit, if it finds that the applicant, licensee or permittee has done any of the following:

(a) Violated any federal or state statute, rule or regulation that relates to the practice of fitting and dealing in hearing aids.

(b) Failed to conduct a direct observation of the ear canal of a purchaser of a hearing aid.

(c) Sold a hearing aid to a person who was not given tests using appropriate procedures and instrumentation or without proper measurement of the functional intensity and range of the person's hearing.

SECTION 17. HAS 6.09 (2) (h) and (i) are repealed.

SECTION 18. HAS 7.03 (1) (d) is created to read:

HAS 7.03 (1) (d) Certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board.

SECTION 19. HAS 7.03 (2) (c) is created to read:

HAS 7.03 (2) (c) Certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board, as provided under s. HAS 8.03.

SECTION 20. HAS 7.05 (1) (a) 4. is created to read:

HAS 7.05 (1) (a) 4. Certification that the applicant has completed, within the 2 years preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved or required by the board, as provided under s. HAS 8.03.

SECTION 21. HAS 7.05 (2) (a) 3. is created to read:

HAS 7.05 (2) (a) 3. Certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved or required by the board, as provided under s. HAS 8.03.

SECTION 22. Chapter HAS 8 is created to read:

## Chapter HAS 8

### CONTINUING EDUCATION REQUIREMENTS

**HAS 8.01 Authority.** The rules in this chapter are adopted by the hearing and speech examining board under the authority of ss. 227.11 (2), 459.095, 459.12 (1) and 459.24 (5m), Stats.

**HAS 8.02 Definitions.** In this chapter:

(1) "Accredited university" means an institution which is accredited by a regional or national accrediting agency recognized by the U.S. department of education.

(2) "Course of study" means course work completed while enrolled as a student at a college or university accredited by a regional or national accrediting agency recognized by the U.S. department of education.

(3) "Hour" means 60 minutes.

(4) "Licensee" means a hearing instrument specialist, audiologist or speech-language pathologist licensed by the board under ch. 459, Stats.

(5) "Program" means a seminar or course other than a course of study offered by a sponsor approved by the board.

**HAS 8.03 Continuing education.** (1) A licensee shall complete at least 20 hours of board approved continuing education programs or courses of study which pertain to the practice of fitting and dealing in hearing instruments, audiology or speech-language pathology, as appropriate, in each biennial renewal period.

Note: A list of approved continuing education programs and courses of study may be obtained from the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) Except as provided under s. HAS 7.05 (1) (a) 4. and (2) (a) 3., continuing education hours may be applied only to the biennial registration period in which the continuing education hours are acquired.

(3) To obtain credit for completion of continuing education hours, a licensee shall, at the time of each renewal, sign a statement certifying that he or she has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board.

(4) A licensee who fails to meet the continuing education requirements by the renewal date shall not practice as a hearing instrument specialist, audiologist or speech-language pathologist, as appropriate, until his or her license is restored under s. HAS 7.05.

(5) For auditing purposes, every licensee shall maintain records of continuing education hours for at least 5 years from the date the certification statement required under sub. (3) is signed.

**HAS 8.04 Approval of continuing education programs and courses of study.** (1) Except as provided in subs. (6) and (7), to apply for approval of a continuing education program or course of study, a sponsor shall submit to the board office, at least 45 days prior to the first date the program or course of study is offered, an application on forms provided by the board and shall include the name of the sponsor, the program or course title, general description and an outline of the program or course, the dates, the location, the name and qualifications of each instructor.

Note: Application forms for approval of continuing education programs and courses of study may be obtained from the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) The following criteria shall be utilized in the approval process:

(a) The subject matter of the program or course shall pertain to an area or topic approved or required by the board which relates to the practice of fitting and dealing in hearing instruments, audiology or speech-language pathology.

(b) The program or course sponsor shall be approved by the board.

(c) The program or course sponsor agrees to monitor the attendance, furnish a certificate of attendance to each participant and maintain records verifying attendance for at least 5 years.

(3) If a continuing education course includes subject matter other than the subject matter areas identified under sub. (2) (a), only the board approved portions of the course which relate to the areas identified under sub. (2) (a), qualify as continuing education required under this chapter.

(4) Continuing education programs or courses of study offered by alternative delivery methods such as home-study courses, self-study packages, computer courses, televideo conferencing and other methods may be approved by the board.

(5) A program or course sponsor may repeat a previously approved program or course without application, if the subject matter and instructor has not changed.

(6) Subject to compliance with the requirements set forth in subs. (2) to (5), the board may accept attendance at and completion of one or more continuing education programs or courses of study approved by the American academy of audiology, American speech-language-hearing association, Wisconsin department of public instruction, international hearing society or the national board for certification in hearing instrument sciences as fulfilling the continuing education hours required under this chapter.

(7) The board may accept attendance at and completion of graduate courses of study from an accredited university which pertain to the practice of fitting and dealing in hearing instruments, to audiology, or to speech-language pathology, as appropriate, as fulfilling one or more continuing education hours required under this chapter. Each clock hour of a course shall be equivalent to one hour of continuing education.

Note: The following entities may be contacted by writing to the: American Academy of Audiology (AAA), 8201 Greensboro Drive, Suite 300, McLean, Virginia, 22102; American Speech-Language-Hearing Association (ASHA), 10801 Rockville Pike, Rockville, Maryland 20852; Wisconsin Department of Public Instruction (DPI), 125 South Webster, Madison, Wisconsin 53702; and the International Hearing Society (IHS) and National Board for Certification in Hearing Instrument Sciences (NBC-HIS), 16880 Middlebelt Road, Suite 4, Livonia, Michigan 48154-3367.

**HAS 8.05 Special continuing education requirements.** (1) If a licensee is required to complete a specified continuing education program or course of study pursuant to s. 459.095 (3) or 459.24 (5m) (a) 3., Stats., the board shall administer an examination on the matter that is the subject of the continuing education program or course of study prior to the date the continuing education program or course of study is offered.

(2) A licensee who passes the examination administered by the board, as provided under sub. (1), is not required to complete the continuing education hours approved by the board for the specified continuing education program or course of study.

(3) A licensee who takes the examination specified under sub. (1), shall pay the fee required under s. 440.05 (1) (b), Stats.

(4) The criteria established under s. HAS 8.04 shall apply to determinations involving the approval of a specified continuing education program or course of study and to the approval of sponsors and cosponsors of a specified continuing education program or course of study.

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(END OF TEXT OF RULE)

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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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10/29/98

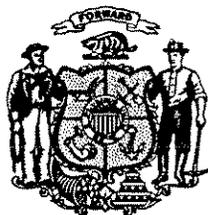
WISCONSIN LEGISLATIVE COUNCIL STAFF



**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

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**CLEARINGHOUSE REPORT TO AGENCY**

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[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 98-115**

AN ORDER to repeal HAS 1.01 (1) and (2a) and (b), 2.01 (4) (b) and 6.09 (2) (h) and (i); to renumber and amend HAS 1.01 (2a) (intro.) and (a), 2.01 (4) (a) and 6.05; to amend HAS 1.01 (5n), 3.02 (5), 6.02 (intro.), (2) and (3), 6.06 (3), 6.08 (2) (b) and 7.02; to create HAS (4s), (4t), (6a), (6b) and (8a), 6.04 (8), 6.05 (2), 6.06 (1) (e) and (f), 6.07 (1) (d), 6.09 (1a), 7.03 (1) (d) and (2) (c) and 7.05 (1) (a) 4. and (2) (a) 3. and chapter HAS 8, relating to continuing education, renewal, temporary practices, practical examinations, fitting of hearing instruments, use of titles, initials and designations and unlicensed practice.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

08-17-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-15-98 REPORT SENT TO AGENCY.

RS:DD;jal;rv

**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 98-115

### 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 September 1998.]**

#### I. Statutory Authority

a. Is s. HAS 6.07 (1) (d) consistent with s. 459.28, Stats.? Reciprocity depends on whether the requirements for licensure in the other jurisdiction are substantially equivalent to Wisconsin's requirements. Presumably, if they are substantially equivalent in the other jurisdiction, there is no need, or authority, to require the applicant to pass the practical examination.

b. The revision to s. HAS 7.02 is arguably inconsistent with SEC. 25 (2) of 1997 Wisconsin Act 49. The revision permits a hearing instrument specialist to avoid the 20-hour continuing education requirement in the year 2000, delaying the requirement to 2001. Had the Legislature intended that result, it appears the result could have been specifically provided for in Act 49. In this regard, see also s. HAS 7.03 (1) (d).

c. Sections 459.095 (3) and 459.25 (5m) (a) 3., Stats., require that rules be promulgated to require each person granted a license to practice as a hearing instrument specialist, a speech-language pathologist or an audiologist to complete a specified continuing education program or course of study to ensure competence with respect to a matter related to the license if the department or the examining board has received a significant number of consumer complaints about the matter or if the examining board otherwise determines there is need for such a requirement. The rule does not make clear whether the continuing education requirements contained in ch. HAS 8 are a response to a "significant number of consumer complaints" or if it has been determined that there is a need for continuing education. A rationale for the creation of ch. HAS 8 should be provided in the analysis to the rule in order to support the statutory authority for the imposition of the new continuing education requirement.

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

a. The department's "analysis" fails to provide a brief summary of the rule as required by s. 227.14 (2) (a), Stats. The analysis merely gives a very general description of the subject matter of the rule; it conveys no information about the substance of the rule.

b. In s. HAS 6.02 (intro.), it is unnecessary to strike "In" and add "As used in." In addition, the necessity for the reference to ch. 459, Stats., in the introductory clause is unclear.

c. The numbering of the subsections created by the treatment clause of SEC. 9 leaves no room for future insertions. For example, it is suggested that subs. (4s) and (4t) be subs. (4m) and (4r), respectively.

d. Since "hearing aid" is already a defined statutory term, why isn't the term "hearing aid" used rather than "hearing instrument"? See s. HAS 6.02 (4t) and (6a), for example.

e. In s. HAS 6.05 (2) (intro.), the phrase "all of" should be inserted after the word "pass."

f. The title to s. HAS 8.01 refers to authority and "purpose." The text of the section makes no reference to the purpose of the rules in ch. HAS 8.

g. In s. HAS 8.03 (1), "Every" should be "A."

h. It is suggested that the sequence of s. HAS 8.03 (2) and (3) be reversed. In addition, reference in sub. (2) to "may be applied only to the biennial registration period in which the continuing education hours are required" is awkward. Can the subsection be stated more clearly?

i. In s. HAS 8.04 (1), it appears that "program" should follow "education."

j. Section HAS 8.04 (2) (intro.) is drafted as if the paragraphs that follow are considerations rather than requirements. However, the provisions appear to be requirements and sub. (6) refers to them as such. It appears that the introductory clause should be redrafted.

k. In s. HAS 8.04 (2) (a), it appears that the second "of" should be "or."

l. In s. HAS 8.04 (4), it appears that the use of "courses of study" is not consistent with the definition. The definition refers to course work completed *at* a college or university.

m. In s. HAS 8.04 (5), "if" should be substituted for "provided that."

n. In s. HAS 8.04 (6), it appears that insertion of "one or more hours" following the first "of" should be considered.

o. In s. HAS 8.05 (1), "if licensees are" should be replaced by "if a licensee is."

p. In s. HAS 8.05 (2), "is not" should replace "will not be."

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

a. Note that statutory references in existing rules not treated by the rule may need attention as a result of the statutory numbering changes made by 1997 Wisconsin Act 49. See, for example, untreated provisions of ch. HAS 1.

b. In s. HAS 6.04 (8), it appears the statutory reference should be replaced by a reference to s. HAS 6.05 (2) (b), instead. In general, the rules should be reviewed to determine if a statutory reference can be made more direct by referencing, instead, the pertinent Wisconsin Administrative Code reference.

c. In the provisions of SECS. 20 through 23 of the rule, it is suggested that the rule provision that imposes the continuing education requirement be cross-referenced.

d. In s. HAS 8.05 (1), it appears that the reference to s. 459.24 (5m) (b), Stats., should be to s. 459.24 (5m) b. 3., Stats.

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

a. In s. HAS 6.05 (2) (a), note that the reference to "written verification of clinical competence" does not include reference to verification "received directly from ASHA." Compare s. HAS 6.05 (1).

b. In s. HAS 6.06 (1) (e) and (f), reference to a temporary "permit" appears inconsistent with statutory terminology. Compare s. 459.24 (6), Stats.

c. In the last sentence of s. HAS 6.06 (3), it is unclear what the clause "if the applicant shows, to the satisfaction of the board, sufficient cause for the renewal" means, given the definition of "sufficient cause" and the context. For example, does it mean that because of illness or other hardship, the applicant was unable to take a required examination? Or pass a required examination? If the latter, does the applicant still have to apply to take the next available examination?

d. The reason for the repeal of s. HAS 6.09 (2) (h) and (i) is not apparent.