

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 99-149

AN ORDER to amend Psy 2.08 and 3.10, relating to reexaminations.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

10-20-99 RECEIVED BY LEGISLATIVE COUNCIL.

11-15-99 REPORT SENT TO AGENCY.

RS:RJC;jal;wu

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 99-149

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.]

1. Statutory Authority

The analysis to the rule indicates that the rule is modeled on a Medical Examining Board rule. It is noted that s. 448.05 (6), Stats., gives the Medical Examining Board the specific authority to limit the number of times an applicant may take an examination. No such specific authority seems to exist for the promulgation of this rule. It is presumed that the authority for this rule comes from s. 455.045 (3), Stats. However, that statutory provision authorizes the Medical Examining Board to promulgate rules for "acceptable performance on examinations." It does not deal with limiting the number of times an individual may take an examination. The analysis to the rule could be strengthened by better identifying how this rule fits within that statutory authority.

2. Form, Style and Placement in Administrative Code

To obviate the need for the substantial underscoring in SECTIONS 1 and 2 of the rule, the amended provisions could simply be repealed and recreated.

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

The phrases "shall not be admitted" in SECTIONS 1 and 2, should be changed to "may not be admitted." [See s. 1.01 (2), Manual.]

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 99-)

PROPOSED ORDER

An order of the Psychology Examining Board to amend Psy 2.08 and 3.10, relating to reexaminations.

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. 455.045, Stats.

Under s. Psy 2.08, an applicant for licensure as a psychologist or school psychologist may currently sit for the examinations required by the board an indefinite number of times. This has resulted in a few applicants who have been reexamined as many as ten times without receiving a passing grade. The objective of this rule is to require that after failing to achieve a passing grade on any examination after four tries, the applicant be required to apply to the board for permission to be reexamined a fourth time, and to demonstrate further education or training as the board may require. fifth?

When an applicant has taken the national Examination for the Professional Practice of Psychology or the Examination on the Practice of School Psychology on four occasions and failed each time, there arises a presumption that the applicant may not be properly prepared to engage in the independent practice of psychology or school psychology until he or she receives further education or training. This rule would require that as a condition for being reexamined a fourth time, such applicants would be required to receive permission from the board and to demonstrate to the board that they have received further remedial education or training which in the opinion of the board addresses those areas in which the applicant has shown weakness.

The Medical Examining Board has had a similar rule in place since 1976 and has found it to be an effective tool in assisting applicants to effectively address those areas of weakness which have caused repeated examination failures.

TEXT OF RULE

SECTION 1. Psy 2.08 is amended to read:

Psy 2.08 Reexamination. An applicant who fails an examination may apply for reexamination to achieve a passing grade in the examinations required under this chapter may apply for reexamination on forms provided by the board and pay the appropriate fee for each reexamination as required in s. 440.05, Stats. An applicant who fails to achieve a passing grade may be reexamined 3 times at not less than 3-month intervals. If the applicant fails to achieve a passing grade on the third reexamination, the applicant shall not be admitted to any further examination until the applicant reapplies to the board for permission to be reexamined and presents evidence satisfactory to the board of further professional training or education as the board may prescribe or approve following its evaluation of the applicant's specific case.

SECTION 2. Psy 3.10 is amended to read:

Psy 3.10 Reexamination. An applicant who fails an examination may apply for reexamination to achieve a passing grade in the examinations required under this chapter may apply for reexamination on forms provided by the board and pay the appropriate fee for each reexamination as required in s. 440.05, Stats. An applicant who fails to achieve a passing grade may be reexamined 3 times at not less than 3-month intervals. If the applicant fails to achieve a passing grade on the third reexamination, the applicant shall not be admitted to any further examination until the applicant reapplies to the board for permission to be reexamined and presents evidence satisfactory to the board of further professional training or education as the board may prescribe or approve following its evaluation of the applicant's specific case.

(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 administrator register, as defined in s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Chairperson
Psychology 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.

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10/19/99

FEB 07 2000

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 99-149)

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the PSYCHOLOGY EXAMINING BOARD is submitting in final draft form rules relating to reexaminations.

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.



Tommy G. Thompson
Governor

State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Marlene A. Cummings
Secretary

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Administrative Rules in Final Draft Form

Psychology Examining Board

Relating to: Reexaminations

Rule: Psy 2.08 & Psy 3.10

Clearinghouse Rule: No. 99-149

**STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 99-149
PSYCHOLOGY EXAMINING BOARD : (s. 227.19 (3), Stats.)**

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:

Under s. Psy 2.08, an applicant for licensure as a psychologist or school psychologist may currently sit for the examinations required by the board an indefinite number of times. This has resulted in a few applicants who have been reexamined as many as ten times without receiving a passing grade. The objective of this rule is to require that after failing to achieve a passing grade on any examination after four tries, the applicant be required to apply to the board for permission to be reexamined a fourth time, and to demonstrate further education or training as the board may require.

When an applicant has taken the national Examination for the Professional Practice of Psychology or the Examination on the Practice of School Psychology on four occasions and failed each time, there arises a presumption that the applicant may not be properly prepared to engage in the independent practice of psychology or school psychology until he or she receives further education or training. This rule would require that as a condition for being reexamined a fourth time, such applicants would be required to receive permission from the board and to demonstrate to the board that they have received further remedial education or training which in the opinion of the board addresses those areas in which the applicant has shown weakness.

The Medical Examining Board has had a similar rule in place since 1976 and has found it to be an effective tool in assisting applicants to effectively address those areas of weakness which have caused repeated examination failures.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on December 7, 1999. Sarah Bowen, Madison, WI, representing the Society of Clinical and Consulting Psychologists and the Wisconsin Psychological Association appeared and registered in support of the rules. There were no other appearances nor were there any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report have been 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
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 99-149)

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When an applicant has taken the national Examination for the Professional Practice of Psychology or the Examination on the Practice of School Psychology on four occasions and failed each time, the applicant has fallen below the minimum standards for acceptable performance on the examination, and a presumption arises that the applicant may not be properly prepared to engage in the independent practice of psychology or school psychology until he or she receives further education or training. This rule would require that as a condition for being reexamined a fourth time, such applicants would be required to receive permission from the board and to demonstrate to the board that they have received further remedial education or training which in the opinion of the board addresses those areas in which the applicant has shown weakness.

The Medical Examining Board has had a similar rule in place since 1976 and has found it to be an effective tool in assisting applicants to effectively address those areas of weakness which have caused repeated examination failures.

TEXT OF RULE

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SECTION 2. Psy 3.10 is repealed and recreated to read:

Psy 3.10 Reexamination. An applicant who fails to achieve a passing grade in the examinations required under this chapter may apply for reexamination on forms provided by the board and pay the appropriate fee for each reexamination as required in s. 440.05, Stats. An applicant who fails to achieve a passing grade may be reexamined 3 times at not less than 3-month intervals. If the applicant fails to achieve a passing grade on the third reexamination, the applicant may not be admitted to any further examination until the applicant reapplies to the board for permission to be reexamined and presents evidence satisfactory to the board of further professional training or education as the board may prescribe or approve following its evaluation of the applicant's specific case.

(END OF TEXT OF RULE)

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Dated _____

Agency _____
Chairperson
Psychology Examining Board

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

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12/20/99