



Carol Roessler
STATE SENATOR

To: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care

From: Senator Carol Roessler, Chair

Date: February 5, 2004

Re: Clearinghouse Rule 03-079, relating to the definition of prohibited dual relationships, the elaboration of the prohibition on exploitative relationships, the responsibility of license-holders to cooperate with board investigations, a requirement to maintain records, and violations of board rules.

CR 03-079 has been referred to the Senate Health, Children, Families, Aging and Long Term Care Committee. This rule provides specific guidance for professional psychologists concerning dual relationships and record keeping.

If you would like the committee to hold a hearing on CR 03-025, please contact Jennifer Halbur in my office by February 17, 2004.

**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 03-079)**

TO: Alan J. Lasee
President of the Senate
Room 219 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the PSYCHOLOGY EXAMINING BOARD is submitting in final draft form rules relating to definitions, deleting antiquated provisions related to public accountants, and changes to the requirements for individuals and firm certified public accountant licenses.

If you have any questions concerning the final draft form or desire additional information, please contact Joel Garb 261-2385.

**STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD**

IN THE MATTER OF RULE-MAKING : **REPORT TO THE LEGISLATURE**
PROCEEDINGS BEFORE THE : **ON CLEARINGHOUSE RULE 03-079**
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:

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

IV. STATEMENT EXPLAINING NEED:

This order provides specific guidance for professional psychologists concerning dual relationships and record keeping by amending sections Psy 5.01 (14) intro. and (14) (c) intro., (17), (24) and (33); and to create sections Psy 1.02 (5m) and (9), and Psy 5.01 (34); relating to the definition of prohibited dual relationships, the elaboration of the prohibition on exploitative relationships, the responsibility of license-holders to cooperate with board investigations, a requirement to maintain records, and violations of board orders.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on November 30, 2003. No persons responded either at the hearing or subsequently in writing to the proposed order.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comments 2. a. through 2. e. All of the recommendations have been adopted.

Comment 5. The word "to" has been inserted as recommended. The phrase "to allow interventions by others" is meant to indicate that the client notes should allow other professionals, when necessary, to continue with therapeutic intervention when the writer of the notes is not available. The word "professionals" has been added after the word "other."

PSY 5 CR03-079 (Sexual misconduct) Leg report 2-2-04.doc

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 03-079)

PROPOSED ORDER

An order of the Psychology Examining Board to renumber and amend Psy 5.01 (33); amend sections Psy 5.01 (14) (intro.), (14) (c) (intro.), (17), and (24); and to create Psy 1.02 (5m) and (9), 5.01 (33) (a) to (e), and (34); relating to the definition of prohibited dual relationships, the elaboration of the prohibition on exploitative relationships, the responsibility of license-holders to cooperate with board investigations, a requirement to maintain records, and violations of board orders.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), and 455.08, Stats. Statutes interpreted: Chapter 455, Stats.

This proposed rule-making re-defines dual relationships and prohibited dual relationships, modifies the existing language of a prohibition on exploitative relationships, clarifies the responsibility of license-holders to cooperate with board investigations, creates a requirement to maintain records, and establishes a violation of a board order as unprofessional conduct.

SECTION 1 creates definitions of "dual relationship" and "prohibited dual relationship".

SECTION 2 adds kissing to a list of quasi-sexual actions prohibited with clients, adds the words "romantic, harassing, or exploitative" to the definition of quasi-sexual actions, and explicitly places the burden of proving that a former client is not vulnerable by reason of emotional or cognitive disorder if a psychologist enters into sexual or quasi-sexual activity.

SECTION 3 simplifies and clarifies the prohibition on dual relationships, by implicit reference to the definitions created in section 1 above.

SECTION 4 clarifies a license-holder's responsibility to cooperate with a request for information from the board.

SECTIONS 5 and 6 make the record-keeping requirement more specific.

SECTION 7 expands the definition of unprofessional conduct to include violation of a psychology statute, a psychology rule or a board order.

TEXT OF RULE

SECTION 1. Psy 1.02 (5m) and (9) are created to read:

Psy 5.01 (5m) "Dual relationship" means a situation in which a psychologist provides professional services to a person with whom the psychologist has another relationship such as, but not limited to, relatives, close friends, employees or employers, students or other supervisees.

(9) "Prohibited dual relationship" means a dual relationship which may impair objectivity or effectiveness, or permit exploitation, or create an actual, apparent or potential conflict of interest.

SECTION 2. Psy 5.01 (14) (intro.) and (c) (intro.) are amended to read:

Psy 5.01 (14) (intro.) Engaging in sexual contact, sexual conduct, kissing, or any other behavior which could reasonably be construed as seductive, romantic, harassing, or exploitative, with any of the following:

(c) (intro.) A former client beyond 2 years of termination of professional services, unless the licensee can demonstrate that there has been no exploitation of the former client, and that the former client is not vulnerable by reason of emotional or cognitive disorder to exploitive influence by the psychologist, in light of all relevant factors, including:

SECTION 3. Psy 5.01 (17) is amended to read:

Psy 5.01 (17) Failure to avoid prohibited dual relationships. ~~or relationships that may impair one's objectivity or create a conflict of interest. Dual relationships include treating employes, supervisees, close friends or relatives.~~

SECTION 4. Psy 5.01 (24) is amended to read:

Psy 5.01 (24) ~~Refusal upon request to cooperate in a timely manner with the board's investigation of complaints lodged against the applicant or licensee of the board. Failure to respond honestly and in a timely manner to a request for information from the board. Persons taking longer than 30 days to provide requested information will have the burden of demonstrating that they have acted in a "timely manner." Taking longer than 30 days to respond creates a rebuttable presumption that the response is not timely.~~

SECTION 5. Psy 5.01 (33) is renumbered 5.01 (33) (intro.) and amended to read:

Psy 5.01 (33) (intro.) Failure to maintain adequate records relating to services provided to a client in the course of a professional relationship. Each patient record entry shall be dated, shall identify the treating therapist, and shall be sufficiently legible to be understood and to allow interventions by other professionals. Unless records are subject to a different records retention policy by an entity with an obligation to maintain treatment records, a licensee shall retain treatment records for at least 7 years. Such records shall contain all of the following:

SECTION 6. Psy 5.01 (33) (a) to (e) are created to read:

- (a) Pertinent patient history.
- (b) Pertinent objective findings related to examination and test results.
- (c) Assessment or diagnosis.
- (d) Plan of treatment for the patient.
- (e) A discharge summary upon termination of treatment.

SECTION 7. Section Psy 5.01 (34) is created to read:

Psy 5.01 (34) Violating any provision of ch. 455, Stats., or any rule or order of the board.

(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

Wisconsin Psychology Examining Board

FISCAL ESTIMATE

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

FINAL REGULATORY FLEXIBILITY ANALYSIS

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

PSY 5 CR03-079 (Sexual misconduct) Leg Draft 2-2-04.DOC



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

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 03-079

AN ORDER to amend Psy 5.01 (14), (17), and (24); and to create Psy 1.02 (5m) and (9) and 5.01 (33) and (34), relating to the definition of prohibited dual relationships, the elaboration of the prohibition on exploitative relationships, the responsibility of license-holders to cooperate with board investigations, a requirement to maintain records, and violations of board orders.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

09-02-2003 RECEIVED BY LEGISLATIVE COUNCIL.

09-25-2003 REPORT SENT TO AGENCY.

RS:REL

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 RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-079

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 2002.]

2. Form, Style and Placement in Administrative Code

- a. In s. Psy 1.02 (9), "might" should be changed to "may."
- b. In the treatment clause of SECTION 2, the notation "Section Psy 5 (14)" should be changed to "Section Psy 5.01 (14)." The notation "Psy 5" in the treatment clauses of SECTIONS 3, 4, 5, and 6 should be changed to "Psy 5.01."
- c. In s. Psy 5.01 (14) (intro.), "any of the following" should be added before the colon.
- d. In the rule analysis, the department states that SECTION 5 creates a recordkeeping requirement by creating s. Psy 5.01 (33). However, s. Psy 5.01 (33) already exists in the current rule and contains a recordkeeping requirement. SECTION 5 appears to make this requirement more specific. Therefore, it is suggested that the rule either amend s. Psy 5.01 (33) to reflect the department's intended changes to the recordkeeping requirement or repeal and recreate the section.
- e. The fiscal estimate should include total dollar figures.

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

In s. Psy 5.01 (33) (intro.), "to" should be inserted in between "provided" and "a." Also, in the context of the rule, what is the meaning of the phrase "to allow interventions by others"?