

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2853/P1dn
TKK:lmk:nwn

July 30, 2007

Representative Newcomer:

This draft makes changes to Chapter 459 based upon materials submitted with the drafting request ("drafting materials"). Please carefully review this draft to be sure that I have captured your intent. I have a number of questions about this draft:

1. Information on receipts issued for hearing instruments. The drafting materials propose adding "name" after license under ss. 459.03 and 459.24 (3m) (a). What is a "license name"? Should the word, license, be replaced with licensee?

2. Disciplinary grounds under s. 459.10 (1) and 459.34 (2).

a. The drafting materials proposed three new grounds for discipline for persons making a false statement or a misrepresentation under sections 459.10 (1) (q), (r), and (s) and two grounds under 459.34 (2) (e) and (f).

i. I separated out the misuse of the words "doctor," "clinic," etc., from proposed s. 459.10 (1) (q) to create a fourth ground for discipline under s. 459.10 (1) (t). Okay?

ii. Because it is LRB drafting practice to minimize confusion in the statutes by avoiding the renumbering of sections whenever possible, I created paragraphs (i) and (j), instead of renumbering current paragraphs (e) through (h). I also separated out the misuse of the words "doctor," "clinic," etc., from proposed s. 459.34 (2) (e) to create a third ground for discipline under s. 459.34 (2) (k). Okay?

b. As drafted, a person who makes a misrepresentation or false statement will be subject to discipline regardless of whether the misrepresentation or false statement was made intentionally, negligently, or by accident. Okay?

c. The drafting materials propose changing s. 459.10 (1) (r) as follows: "make any statement regarding the cure or the cause of a hearing impairment by the use of a hearing instrument..." I found this to be confusing; could the use of a hearing instrument cause a hearing impairment? Instead, I drafted the following:

"Intentionally made a false statement regarding the cause of a hearing impairment or the cure of a hearing impairment by the use of a hearing instrument." Did I correctly capture your intent?

d. I modified proposed ss. 459.10 (1) (s) and 459.34 (2) (f); the use of the phrases “material misstatement of fact” and “misrepresentation” is redundant. Okay?

3. Deceptive advertising under ss. 459.10 (1) (g) and 459.34 (2) (d). Please review my treatment of the sections regulating false, misleading, or deceptive advertising, which differs from the drafting materials. I created a definition of “deceptive advertising” at s. 459.01 (1d). Did I accurately capture the prohibited activity?

4. Definition of “audiology” under s. 459.20 (2). Please review the definition of “audiology,” which modifies the drafting materials. Did I accurately capture the meaning of the term?

5. Titles under s. 459.24 (1) (a) and (b). I did not include the phrase “without limitation by enumeration.” The use of this language and “similar titles” is redundant.

6. Prohibited titles under s. 459.24 (1m). The drafting materials add the title, “audioprosthologist” to two different sections, ss. 459.24 (1) (b) and s. 459.24 (1m), resulting in the following inconsistency: the use of the term, “audioprosthologist,” is permitted under section 459.24 (1) (b) if the person holds a license, but is prohibited under any circumstance under s. 459.24 (1m). Although I changed “hearing aid” to “hearing instrument” in the prohibited titles, “certified hearing aid audiologist” and “licensed hearing aid audiologist,” I made no other changes to s. 459.24 (1m). Okay?

7. Changes to educational requirements for audiologists under s. 459.24 (3) (d). Please note the following:

a. Because all of the conditions under sub. (3) apply to persons who do not already have a license, I don’t believe it is necessary to include the language referencing “an applicant . . . who has never possessed a license. . . .”

b. I replaced the word, didactic, with educational; didactic is a less familiar term (it appears nowhere else in the statutes). Okay?

8. Changes to requirements for temporary licensees under s. 459.24 (6) (b). I was confused by the reference to a “permanent license” in proposed s. 459.24 (6) (bm) of the drafting materials. Did you intend that persons who satisfy the requirements under this paragraph need never apply for a license renewal or meet any of the continuing educational requirements under sub. (5m)? Or did you intend that, after December 31, 2008, audiologists no longer be permitted to apply for temporary licensure and that they would have to follow the path for licensure under s. 459.24 (3)?

I proceeded under the assumption that you wished to eliminate the path for temporary licensure, and eliminated the availability of a license under s. 459.24 (6) (b) after December 31, 2008. Okay?

9. Changes to examination requirements for temporary licensees under s. 459.24 (6) (c).

a. The drafting materials instructed me to eliminate the reference to examinations under 459.26 (2) (b). Was it your intent that, until December 31, 2008, an applicant for a temporary license to practice audiology can avoid taking the examination required under this section?

b. The drafting materials instructed me to eliminate the term, "once," for applicants for renewal of a license granted under par. (a). As drafted, temporary licensees practicing speech-language pathology may now have their licenses renewed indefinitely by the board even if the temporary licensee does not pass the examination required under s. 459.24 (2) (e) and never completes the clinical fellowship required under s. 459.24 (2) (f), provided they continue to work under the supervision of a speech language pathologist licensed under sub. (2). Is that your intent?

c. The drafting materials instructed me to eliminate the sentence permitting temporary licensees under s. 459.24 (6) (b) to renew the temporary license. Would there be any persons who currently hold a temporary license to practice audiology that should be permitted to renew their license under current law? That is, instead of deleting this sentence entirely, should I amend the provision governing renewal to read, "Until December 31, 2008, a temporary license granted under par. (b) may be renewed once...?"

I look forward to hearing from you after you have had an opportunity to review this draft.

Tracy K. Kuczenski
Legislative Attorney
Phone: (608) 266-9867
E-mail: tracy.kuczenski@legis.wisconsin.gov