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(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2009-10

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules ...

### COMMITTEE NOTICES ...

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### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

**STATE OF WISCONSIN  
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING  
AND SOCIAL WORK EXAMINING BOARD**

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**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : MARRIAGE AND FAMILY THERAPY,  
MARRIAGE AND FAMILY THERAPY, : PROFESSIONAL COUNSELING AND  
PROFESSIONAL COUNSELING AND : SOCIAL WORK EXAMINING BOARD  
SOCIAL WORK EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 10-013)**

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TO: Senator Jim Holperin, Senate Co-Chairperson  
Joint Committee for the Review of Administrative Rules  
Room 409 South, State Capitol  
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the MARRIAGE AND FAMILY THERAPY,  
PROFESSIONAL COUNSELING AND SOCIAL WORK EXAMINING BOARD is submitting  
in final draft form rules relating to psychometric testing.

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.

Thank you.

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**STATE OF WISCONSIN  
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING  
AND SOCIAL WORK EXAMINING BOARD**

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**IN THE MATTER OF RULE-MAKING :**  
**PROCEEDINGS BEFORE THE :** **REPORT TO THE LEGISLATURE**  
**MARRIAGE AND FAMILY THERAPY, :** **ON CLEARINGHOUSE RULE 10-013**  
**PROFESSIONAL COUNSELING AND :** **(s. 227.19 (3), Stats.)**  
**SOCIAL WORK 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:**

No new or revised forms are required by these rules.

**III. FISCAL ESTIMATES:**

The department estimates that this rule will require staff time in the Division of Board Services. The total one-time salary and fringe costs are estimated at \$575. The department finds that this rule has no significant fiscal effect on the private sector.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

This proposed rule-making order by the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, in collaboration with the Psychology Examining Board, repeals and recreates s. MPSW 1.11 regarding psychometric testing. Psychometric testing is currently defined and authorized under s. 457.033, Stats., as a measurement tool for assessing psychological characteristics, such as intelligence, aptitude, and emotional disturbance, in which a sample of an examinee's behavior is obtained and evaluated and scored using a standardized process. Two examples of fairly well known psychometric tests are the Minnesota Multiphasic Personality Inventory (MMPI) and the Rorschach Ink Blot test.

Under ch. 457, Stats., the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board and the Psychology Examining Board are required to jointly promulgate rules that specify the different levels of psychometric testing that an individual who is certified or licensed under ch. 457, Stats., is qualified to perform. The statute also directs that the resulting administrative rules are to be consistent with guidelines of the American Psychological Association or other nationally recognized

guidelines. Both examining boards have collaborated in this rule-making process to develop the proposed rule amendments.

The examining boards found that the existing rules do not adequately delineate between what is considered psychometric testing and instruments used by mental health therapists in initial evaluations or evaluating progress in therapy. In addition, the boards found that the existing rule was overly restrictive in determining who may provide training in the use of psychometric tests and the requirements for licensed mental health therapists to obtain permission as to what tests (including in what settings and with which populations) they may use. Accordingly, these proposed rules will clarify the definition of psychometric testing; who may use psychometric tests and other testing instruments; and who may supervise individuals that use psychometric tests.

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

A public hearing was held on April 13, 2010. There were no appearances at the public hearing and no written comments were received.

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

**Comment 1.** Authority.

**Response:** The board has changed this proposed rule-making order to repeal and recreate s. MPSW 111, rather than amending, renumbering, etc. With that formatting change, language has been inserted at the beginning of the rule text citing the authority for the rule. As a result of that, subsections and titles to those subsections have been created. Also, a Note has been added following s. MPSW 1.11 (5) relating to these rules being developed in collaboration with the Psychology Examining Board.

**Comment 5.g.** Why is the language in s. MPSW 1.11 (4) repealed? Is the inclusion of psychologists in sub. (2m) (b) intended to replace this language? Or, is it because persons in addition to psychologists may supervise psychometric testing? If so, should those other persons be specified here, in addition to psychologists, rather than repealing this provision?

**Response:** The language is not being repealed. The language has been recreated in s. MPSW 1.11 (4).

All of the remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

#### **VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:**

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

STATE OF WISCONSIN  
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING  
AND SOCIAL WORK EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : MARRIAGE AND FAMILY THERAPY,  
MARRIAGE AND FAMILY THERAPY, : PROFESSIONAL COUNSELING  
PROFESSIONAL COUNSELING AND : AND SOCIAL WORK EXAMINING  
SOCIAL WORK EXAMINING BOARD : BOARD ADOPTING RULES  
: (CLEARINGHOUSE RULE 10-013)

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PROPOSED ORDER

An order of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board to repeal and recreate MPSW 1.11, relating to psychometric testing.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

**Statutes interpreted:**

Section 457.033, Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) and 457.033, Stats.

**Explanation of agency authority:**

The Marriage and Family Therapy, Professional Counseling and Social Work Examining Board and the Psychology Examining Board are required to jointly promulgate rules that specify the different levels of psychometric testing that an individual who is certified or licensed under this chapter is qualified to perform.

**Related statute or rule:**

There are no other statutes or rules other than those listed above.

**Plain language analysis:**

This proposed rule-making order by the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, in collaboration with the Psychology Examining Board, repeals and recreates s. MPSW 1.11 regarding psychometric testing. Psychometric testing is currently defined and authorized under s. 457.033, Stats., as a measurement tool for assessing psychological characteristics, such as intelligence,

aptitude, and emotional disturbance, in which a sample of an examinee's behavior is obtained and evaluated and scored using a standardized process. Two examples of fairly well known psychometric tests are the Minnesota Multiphasic Personality Inventory (MMPI) and the Rorschach Ink Blot test.

Under ch. 457, Stats., the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board and the Psychology Examining Board are required to jointly promulgate rules that specify the different levels of psychometric testing that an individual who is certified or licensed under ch. 457, Stats., is qualified to perform. The statute also directs that the resulting administrative rules are to be consistent with guidelines of the American Psychological Association or other nationally recognized guidelines. Both examining boards have collaborated in this rule-making process to develop the proposed rule amendments.

The examining boards found that the existing rules do not adequately delineate between what is considered psychometric testing and instruments used by mental health therapists in initial evaluations or evaluating progress in therapy. In addition, the boards found that the existing rule was overly restrictive in determining who may provide training in the use of psychometric tests and the requirements for licensed mental health therapists to obtain permission as to what tests (including in what settings and with which populations) they may use. Accordingly, the amended rules will clarify the following: 1) the definition of psychometric testing; 2) who may use psychometric tests and other testing instruments; and 3) who may supervise individuals that use psychometric tests.

This proposed rule-making order amends the definition of psychometric testing with language which clarifies that the testing is a procedure for measuring not only psychological features but for measuring the "behavioral and interpersonal characteristics" of an examinee who is subjected to the testing. This proposed rule-making strikes out a portion of the current rule regarding which test instruments do not constitute psychometric testing. It also creates additional language to clarify that psychometric testing does not apply to those test instruments which are solely used to screen for problems, assist in treatment planning, clarify treatment goals, plan intervention or monitor progress in treatment.

Language is added to clarify the qualifications of a credential holder who may perform psychometric testing. The proposed rule also clarifies that the licensee or the person supervised by the licensee must have the requisite knowledge, skills, training and experience necessary to perform psychometric testing. The rule specifies that the categories of licensed who are authorized to perform the tests includes licensed psychologists, licensed marriage and family therapists, licensed professional counselors, licensed clinical social workers, certified advanced practice social workers and certified independent social workers and licensees of the board acting under the supervision of any of these licensed professionals. Individuals who hold certification as a social worker are not permitted to perform psychometric testing on their own or under the supervision of another licensee.

The proposed rule creates requirements that the training must be from a regionally accredited program and requires compliance with the requirements for use of psychometric tests. This change will insure that the licensee who is deemed qualified to perform testing has the ability to independently select, administer, score and interpret the tests as well as to use the test results in the appropriate cultural context, the examinee's life and the purpose for which it is given. A licensee may engage in psychometric testing only if the appropriate section of the board has received and approved the information demonstrating the licensee's generic and specific qualifications to perform psychometric testing.

The proposed rule changes the method of proof required to verify that a person is qualified to perform psychometric testing by replacing the affidavit requirement with a signed statement from a professional qualified to supervise psychometric testing. The language will facilitate the board's ability to make informed decisions based upon full and accurate information provided in a non-overly restrictive format. The affidavit form required under the existing rule has been found to be cumbersome for providers due to the legal requirement that the document be notarized. However, those persons who have been previously qualified based upon submission of an affidavit under the existing rule would not be required to comply with the new requirement of submitting a signed statement; this would in effect be a "grandparenting" provision for those who were previously deemed qualified. The amended language will also clarify what information is required of the professional who is verifying the abilities of the credential holder seeking to perform testing. As a result of the rule modifications, it is anticipated that use of a signed statement which contains the required information will facilitate the board's determination of who is qualified to perform psychometric testing and will better serve the public interests.

**Summary of, and comparison with, existing or proposed federal regulation:**

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

**Comparison with rules in adjacent states:**

**Illinois:**

**Marriage and Family Therapy:** There are no statutory limitations on marriage and family therapists for provision of psychometric testing. The only exception being that ethical practice requires marriage and family therapists to limit their practice to the areas in which they are competent.

Under Illinois administrative code governing the practice of marriage and family therapists, s. 1283.100 Professional Conduct:

a) A therapist must not perform, nor pretend to be able to perform, professional services beyond his/her scope of practice...

**Psychology:** State law includes definitions of psychological testing as well as neurophysiological testing as part of the definition of clinical psychology; however appears only to restrict the provision of “clinical psychological services” to licensed psychologists. Clinical psychological services refers to any services listed under the definition of the practice of psychology, and only if the terms “psychological,” “psychologic,” or “psychology” are attached to the service. By extension, psychological testing would be prohibited however, psychometric testing would not.

Under Illinois statutes s. 225 ILCS 15, Clinical Psychologist Practice Act (5) “Clinical psychology” means the independent evaluation, classification and treatment of mental, emotional, behavioral or nervous disorders or conditions, developmental disabilities, alcoholism and substance abuse, disorders of habit or conduct, the psychological aspects of physical illness. ***The practice of clinical psychology includes*** psychoeducational evaluation, therapy, remediation and consultation, ***the use of psychological and neuropsychological testing***, assessment, psychotherapy, psychoanalysis, hypnosis, biofeedback, and behavioral modification when any of these are used for the purpose of preventing or eliminating psychopathology, or for the amelioration of psychological disorders of individuals or groups. “Clinical psychology” does not include the use of hypnosis by unlicensed persons pursuant to Section 3.

(6) A person represents himself to be a “clinical psychologist” within the meaning of this Act when he or she holds himself out to the public by any title or description of services incorporating the words “psychological,” “psychologic,” “psychologist,” “psychology,” or “clinical psychologist” or under such title or description offers to render or renders clinical psychological services as defined in paragraph (7) of this Section to individuals, corporations, or the public for remuneration.

(7) “Clinical psychological services” refers to any services under paragraph (5) of this Section if the words “psychological,” “psychologic,” “psychologist,” “psychology” or “clinical psychologist” are used to describe such services by the person or organization offering to render or rendering them.

**Professional Counselors:** There are no statutory limitations on professional counselors for provision of psychometric testing. The only exception being that ethical practice requires professional counselors to limit their practice to the areas in which they are competent.

Under Illinois administrative code governing professional counselors:

s. 1375.225 Unprofessional Conduct:

“Different tests demand different levels of competence for administration, scoring and interpretation. ***Members must have the appropriate education and training for each specific test and recognize the limits of their competence and perform only those functions for which they are prepared.*** In particular, members using computer-based test interpretations must be trained in the concept being measured and the specific instrument being used prior to using this type of computer application.”

(emphasis added)

**Iowa:**

**Psychology:** Testing may be part of the definition of practice of psychology (from IA Stats. s.154B.1 Definitions) "*Practice of psychology*" means... *Application of Principles includes... measuring and testing personality, intelligence, aptitudes, public opinion, attitudes, and skills...*but there is no explicit mention.

The Iowa Psychology Practice/Title restrictions restrict the use of "psychology, psychological" to licensed psychologists, but the restrictions do not appear to restrict psychometric testing. They would clearly restrict the offering of "psychological testing." Iowa appears to give broad authority to mental health licensees (identified as marriage and family therapists, counselors and social workers) to act within the bounds of their credential under the scope of practice.

(s. 154 B.4 Acts Prohibited and 154 B.5 Scope of Chapter)

**Michigan:**

**Psychology:** As per contact with the Michigan Board of Psychology, psychological testing is a part of psychology practice act. In other words, Michigan law limits psychological testing to psychologists.

Furthermore, according to the Board Chair of Michigan, Dane Ver Morris, the State attorney's general's office has advised the LPC Board that psychological testing falls outside the scope of the statutory definition of counseling. Thus, the Board is precluded from proposing administrative rules that would allow test administration.

Under Michigan statute s. 333.18201 Definitions; principles of construction:

(b) "Practice of psychology" means the rendering to individuals, groups, organizations, or the public of services involving the application of principles, methods, and procedures of understanding, predicting, and influencing behavior for the purposes of the diagnosis, assessment related to diagnosis, prevention, amelioration, or treatment of mental or emotional disorders, disabilities or behavioral adjustment problems by means of psychotherapy, counseling, behavior modification, hypnosis, biofeedback techniques, *psychological tests*, or other verbal or behavioral means...

(emphasis added)

**Counseling:** Michigan law governing counselors specifically excludes the practice of psychology from that of the practice of counselors; therefore, psychological testing is excluded from counselor practice.

Under Michigan Statute s. 333.18101 Definitions.

(i) Evaluation and appraisal techniques. As used in this subparagraph, “appraisal techniques” means selecting, administering, scoring, and interpreting instruments and procedures designed to assess an individual’s aptitudes, interests, attitudes, abilities, achievements, and personal characteristics for development purposes **and not for psychodiagnostic purposes.**

(d) “Practice of counseling” or “counseling” means the rendering to individuals, groups, families, organizations, or the general public a service involving the application of clinical counseling principles, methods, or procedures for the purpose of achieving social, personal, career, and emotional development and with the goal of promoting and enhancing healthy self actualizing and satisfying lifestyles whether the services are rendered in an educational, business, health, private practice, or human services setting. **The practice of counseling does not include the practice of psychology** except for those preventive techniques, counseling techniques, or behavior modification techniques for which the licensed professional counselor or limited licensed counselor has been specifically trained...

*(Emphasis added)*

**Marriage and Family Therapy:** Michigan law restricts access to administration and interpretation of psychologists; does however allow some testing under State statute governing the definition of Marriage and Family Therapy.

333.16901 Definitions; principles of construction.

(c) “Practice of marriage and family therapy” means the providing of guidance, testing, discussions, therapy, instruction, or advice that is intended to avoid, eliminate, relieve, manage, or resolve marital or family conflict or discord, to create, improve, or restore marital or family harmony, or to prepare couples for marriage. **Practice of marriage and family therapy does not include the administration and interpretation of psychological tests except for those tests that are consistent with the individual’s education and training and with the code of ethics for licensed marriage and family therapists.**

*(Emphasis added)*

**Social Work:** Michigan law governing social work separates social work practice at the baccalaureate level and master’s level, as does Wisconsin. Baccalaureate practice is very restrictive in scope whereas master’s level practice includes clinical mental health treatment (e.g. psychotherapy). While Michigan law does not mention psychological testing for master’s level social work, there is a specific prohibition for such testing at the baccalaureate level.

Under Michigan Statute s. 333.18501 Definitions; scope.

(1) As used in this part:

(b) "Licensed bachelor's social worker" means an individual licensed under this article to engage in the practice of social work at the bachelor's level.

(c) "Licensed master's social worker" means an individual licensed under this article to engage in the practice of social work at the master's level.

(f) "Practice of social work at the bachelor's level" means, subject to subsections (2) and (4), all of the following applied within the scope of social work values, ethics, principles, and skills:

(iv) ***The administration of assessment checklists that do not require special training and that do not require interpretation.***

(g) "Practice of social work at the master's level" means, subject to subsection (5), all of the following applied within the scope of social work values, ethics, principles, and advanced skills:

(i) The advanced application of the knowledge of human development and behavior and social, economic, and cultural institutions.

(ii) The advanced application of macro social work processes and systems to improve the social or health services of communities, groups, or organizations through planned interventions.

(iii) The application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. Treatment methods include the provision of advanced social work case management and casework and individual, couple, family, or group counseling and psychotherapy whether in private practice or other settings.

(4) The practice of social work at the bachelor's level does not include the practice of medicine or the practice of osteopathic medicine and surgery, including, but not limited to, the prescribing of drugs, the administration of electroconvulsive therapy, the practice of psychotherapy, and other advanced clinical skills pursuant to section 18501(g)(iii) ***or the administration or interpretation of psychological tests***, except as otherwise provided in subdivision (f)(iv).

(5) The practice of social work at the master's level does not include the practice of medicine or the practice of osteopathic medicine and surgery, including, but not limited to, the prescribing of drugs or administration of electroconvulsive therapy.

## **Minnesota:**

**Marriage & Family Therapy:** Psychometric or psychological testing is not mentioned in statutes or administrative rules governing marriage and family therapists. Minnesota's administrative code governing marriage and family therapist's code of conduct states that therapists may not provide services that the therapist is not trained to perform.

## 5300.0350 CODE OF ETHICS.

### Subpart. 4.

A. A therapist must not perform, nor pretend to be able to perform, professional services beyond the therapist's field or fields of competence.

**Professional Counselors:** Psychometric or psychological testing is not mentioned in statutes defining scope of practice, however testing is defined and administration of testing is described under board of behavioral health rules (governing professional counselors – see below). In addition, licensing statutes exclude services that a counselor is not trained to perform as outside the scope of practice.

As per 148B.50 Subdivision (5)(b), stats., Licensing professional counseling does not include activities or services undertaken by persons listed in section 148B.592, ***or the performance of any act that licensed professional counselors are not educated and trained to perform.***

As per s. 2150.7505 DEFINITIONS, Subp. 26. Standardized tests, Admin. Code: “Standardized test” means a test that is administered, recorded, and scored in a uniform and objective manner, is interpreted by means of normative data, and includes a manual or other published information that fully describes its development, rationale, validity, reliability, and normative data.

As per s. 2150.7565 ASSESSMENTS, TESTS, REPORTS, Subpart 2. Administration and interpretation of tests, Admin. Code: Providers shall use tests as described in items A to E:

- A. Standardized tests shall be used preferentially over nonstandardized tests.
- B. All tests must be administered and responses must be recorded, scored, and interpreted based on practice of scientific foundations.
- C. If a test is used in a nonstandard manner, the limitations of the test and the reasons for its nonstandard use must be clearly stated in the report.
- D. A test’s reliability, validity, and normative data must be taken into account in its selection, use, and interpretation.
- E. The reliability and validity of test statements and interpretations in reports are the responsibility of the provider, including when automated testing services are used.

**Psychology:** Psychometric testing may be part of the definition of practice of psychology (from MN Stats. s. 148.89 Definitions Subd. 5.) *“Practice of psychology” means...assessment, including psychological testing and other means of evaluating personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning...*

**Social Work:** Psychometric or psychological testing is not mentioned in statutes defining scope of practice for social work; however testing is broadly mentioned under administrative rules, describing “assessment or diagnosis instruments” (see below). In addition, administrative rules governing conduct prevent social workers from providing services they are not adequately trained to provide.

As per Social Work Admin. Code, s. 8740.0320 PRACTICE REQUIREMENTS. Subp. 2. Assessment or diagnosis instruments. A social worker shall not use an assessment or diagnostic instrument without adequate training. A social worker shall follow standard and accepted procedures for using an assessment or diagnostic instrument. A social

worker shall inform a client of the purpose before administering the instrument and shall make the results available to the client.

As per social work admin. Code, s. 8740.315 COMPETENCE. Subp. 2. Limits on practice. A social worker shall limit practice to the permissible scope of practice for the social worker's license and competence.

**Summary of factual data and analytical methodologies:**

Under ch. 457, Stats., the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (Joint Board) and the Psychology Examining Board (PEB) are required to jointly promulgate rules that specify the different levels of psychometric testing that an individual who is certified or licensed under ch. 457, Stats., is qualified to perform. Existing administrative rules governing psychometric testing further restricts authorization to provide psychometric testing to license holders pursuant to s. MPSW 1.11. The statute also directs that the resulting administrative rules are to be consistent with guidelines of the American Psychological Association (APA) or other nationally recognized guidelines. The original rules as drafted were in accordance with APA guidelines and the proposed revisions do not substantially deviate from the underlying educational and experience requirements. In addition, to preserve the statutory requirement for joint promulgation, a small number of board members were appointed from the Joint Board and PEB to work together between scheduled board meetings to work on the proposed rules and the policy changes they entailed. The proposed rule changes drafts were brought before both examining boards for review and approval. Board members "appointed" were Bruce Kuehl, Professional Member of the MFT Section of the Joint Board, George Kamps, Professional Member of the Social Worker Section of the Joint Board and Dr. Bruce Erdmann, Professional Member of the PEB.

Other factual data cited elsewhere includes:

1. Number of License Holders of the Joint Board issued psychometric testing authorization since 2001: 23 (4 clinical social workers and 19 professional counselors. Numbers derived from physical authorization letters on file within the DRL

2. Number of Active License Holders Eligible for Psychometric Testing Authorization: 6,529 (Sept 2009 active license holder counts for license marriage and family therapists, professional counselors and clinical social workers)

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:**

The proposed changes should not cause substantial negative effect on credential holders operating in small business settings in terms of incurring increased operating costs or any additional operational difficulties, nor should the rule cause any appreciable changes to small business in general. The board's change to the rule affects a small portion of

practitioners and clarifies the rule in the following areas: 1) the definition of psychometric testing; 2) who may use psychometric tests and other testing instruments; and 3) who may supervise individuals that use psychometric tests. The proposed rules should have little, if any, appreciable impact on small business as the rule does not increase or decrease the educational or practice requirement to receive approval to conduct psychometric testing. Further, since 2001, the board has issued only 24 such authorizations to a pool of 6,524 eligible license holders (Sept 2009 – active license holder counts of marriage and family therapists, professional counselors and clinical social workers).

Section 227.137, Stats., requires an “agency” to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an “agency” in this section.

**Anticipated costs incurred by private sector:**

The department finds that this rule has no significant fiscal effect on the private sector.

**Fiscal estimate:**

The department estimates that this rule will require staff time in the Division of Board Services. The total one-time salary and fringe costs are estimated at \$575.

**Effect on small business:**

These proposed rules were reviewed by the department’s Small Business Review Advisory Committee and it was determined that the rules will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at [hector.colon@wisconsin.gov](mailto:hector.colon@wisconsin.gov), or by calling 608-266-8608.

**Agency contact person:**

Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov).

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to [pamela.haack@wisconsin.gov](mailto:pamela.haack@wisconsin.gov). Comments must be received on or before April 16, 2010, to be included in the record of rule-making proceedings.

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## TEXT OF RULE

SECTION 1. MPSW 1.11 is repealed and recreated to read:

**MPSW 1.11 Psychometric testing.** (1) **AUTHORITY.** This rule is adopted pursuant to ss. 15.08 (5) (b), 227.11 (2) and 457.033, Stats.

(2) **DEFINITION.** In this section, the term “psychometric test” means a procedure for measuring psychological, behavioral or interpersonal characteristics in which a sample of an examinee’s behavior is obtained and subsequently evaluated and scored using a standardized process. A person credentialed by the board may not use a testing instrument for diagnostic or assessment purposes unless he or she satisfies the requirements in sub. (5). Psychometric testing does not include a test instrument used solely to screen for problems, to assist in treatment planning, to clarify treatment goals, to plan for interventions, to monitor progress in treatment or an unstandardized questionnaire, unstructured behavior sample or a test used to evaluate performance in education or training or training prepared by a teacher or trainer.

(3) **REQUIREMENTS FOR PERFORMING PSYCHOMETRIC TESTING.** The competent use of a psychometric test requires that the licensee or person supervised by the licensee have the requisite knowledge, skills, training and experience needed to do all of the following:

- (a) Independently select and administer tests appropriate to the practice setting and area of practice.
- (b) Accurately administer, score, and interpret the test.
- (c) Understand and communicate the strengths and limitations of the test appropriate to the context in and purpose for which it is given.
- (d) Use culturally appropriate and sensitive instruments and norms.
- (e) Analyze the results within a broad context of information about the examinee’s life.
- (f) Seek supervision or consultation as needed from any licensee who are authorized to perform psychometric testing under this subsection.

(4) **LICENSEES AUTHORIZED TO PERFORM PSYCHOMETRIC TESTING.** Psychometric testing may be performed by the following individuals:

- (a) A psychologist licensed under ch. 455, Stats.

(b) A licensed or training licensed marriage and family therapist, a licensed or training licensed professional counselor or a licensed or training licensed clinical social worker or a certified advanced practice social worker or independent social worker who satisfies the requirements in sub. (5) (a) and is acting under the supervision of a licensed psychologist.

(c) A licensed marriage and family therapist, licensed professional counselor or licensed clinical social worker who satisfies the requirements in sub. (5) (a) and (b).

(d) A licensed or training licensed marriage and family therapist, a licensed or training licensed professional counselor or a licensed or training licensed clinical social worker or a certified advanced practice social worker or independent social worker who satisfies the requirements in sub. (5) (a) and is acting under the supervision of another licensee of the board specified in par. (c).

(5) EDUCATIONAL REQUIREMENTS FOR PERFORMING PSYCHOMETRIC TESTING WITHOUT SUPERVISION. A person who meets the requirements in s. MPSW 1.11 (4) (b), (c) or (d) may engage in psychometric testing without supervision only if the appropriate section of the board has received and approved the following information demonstrating generic and specific qualifications to perform psychometric testing:

(a) Academic training at the graduate or postgraduate level from a regionally accredited program that covered:

1. Descriptive statistics.
2. Reliability and measurement error.
3. Validity and meaning of test scores.
4. Normative interpretation of test scores.
5. Selection of appropriate tests.
6. Test administration procedures.
7. Ethnic, racial, cultural, gender, age and linguistic variables.
8. Testing individuals with disabilities.

(b) A signed statement from a professional qualified to supervise psychometric testing as set forth in sub. (4) (a) and (c) that the supervised licensee meets the requirements to use psychometric tests as set forth in this subsection. A licensee

determined to be qualified to use psychometric tests by prior affidavit is not required to resubmit a signed statement and is deemed to meet the requirements of pars. (a) and (b).

(6) LICENSEES QUALIFIED TO SUPERVISE PSYCHOMETRIC TESTING. The only professionals qualified to supervise psychometric testing are licensed psychologists, licensed marriage and family therapists, licensed professional counselors, and licensed clinical social workers who meet the requirements in sub. (5) (a) and (b).

Note: Section MPSW 1.11 was developed in collaboration with the Psychology Examining Board, pursuant to s. 457.033, 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  
Marriage and Family Therapy,  
Professional Counseling and Social Work  
Examining Board

MPSW 1.11 CR10-013 (Psychometric testing) Draft to Leg 8-31-10



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council 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 **10-013**

AN ORDER to repeal MPSW 1.11 (4); to renumber and amend MPSW 1.11 (1) and (2); to amend MPSW 1.11 (3) (intro.), (a) (intro.) and (b) and (5); and to create MPSW 1.11 (1) (a) to (c), (2) (a) to (f), and (2m), relating to psychometric testing.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

02-05-2010 RECEIVED BY LEGISLATIVE COUNCIL.

03-05-2010 REPORT SENT TO AGENCY.

RS:PS

**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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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-013

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### 1. Statutory Authority

a. The statute cited as authority for this rule--s. 457.033, Stats.--requires the Marriage and Family Therapy, Professional Counselor, and Social Work (MPSW) Examining Board and the Psychology Examining Board to “jointly promulgate rules” specifying the different levels of psychometric testing that may be performed by individuals who are certified or licensed under ch. 457, Stats. [Under ch. 457, Stats., individuals certified include social workers, advanced practice social workers, and independent social workers; individuals licensed include clinical social workers, marriage and family therapists, and professional counselors.] Section 457.033, Stats., further specifies that the rules must be consistent with guidelines of the American Psychological Association (APA) or other nationally recognized guidelines for psychometric testing and that individuals certified or licensed under ch. 457, Stats., may engage in psychometric testing only as provided for in the rules.

The language requiring joint promulgation could be read as requiring each board to promulgate its own rule. However, the analysis to Clearinghouse Rule (CR) 10-013 indicates that the MPSW is promulgating this rule “in collaboration with” the Psychology Examining Board. That was also the approach taken when the MPSW rules on psychometric testing were first promulgated in 2002, following enactment of s. 457.033, Stats. It is also consistent with the approach taken by the Athletic Trainers (AT) Affiliated Credentialing Board and the Medical Examining Board, who were directed in s. 448.9525 (2), Stats., to “jointly promulgate rules” establishing minimum requirements for a particular practice protocol. In that instance, only the

AT Credentialing Board promulgated a rule and the rule analysis noted that the Medical Examining Board had reviewed and approved the rule language. The rule also contained a provision citing the statutes providing statutory authority for the rules. [See s. AT 1.01.]

With respect to CR 10-013, the rule contains provisions that specify psychologists licensed under ch. 455, Stats., as having authority to perform psychometric testing and supervise certain persons regulated under ch. 457, Stats., in doing so. It may be of interest to a person reading these provisions to know that the Psychology Examining Board played a role in the rule's development pursuant to s. 457.033, Stats.

However, without a companion rule from the Psychology Examining Board, once s. MPSW 1.11 is promulgated and published in the Administrative Code, a reader of s. MPSW 1.11, the reader will not be aware that the MPSW rule developed the rule collaboratively with the Psychology Examining Board, pursuant to s. 457.033, Stats.

Therefore, the Rules Clearinghouse suggests the following:

That language be inserted at the beginning of the rule text, citing the authority for the rule, to read as follows:

(1) **Authority.** This rule is adopted pursuant to ss. 15.08 (5) (b), 227.11 (2), and 457.033, Stats.

Note that this will require renumbering the remaining subsections and inserting a title for each. [Section 1.05 (1), Manual.]

It is further suggested that an explanatory note be inserted at the end of s. MPSW 1.11 [after current s. MPSW 1.11 (5)], as permitted in s. 1.09 (1), Manual, to read:

**Note:** Section MPSW 1.11 was developed in collaboration with the Psychology Examining Board, pursuant to s. 457.033, Stats.

b. The explanation of agency authority incorrectly states that the two boards are *authorized* to jointly promulgate rules; it should state that the statute *requires* them to do so.

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

a. In the plain language analysis:

- (1) The third paragraph, on line 3, "board" should be plural, if the two boards jointly reached that conclusion.
- (2) In the description of SECTION 3, "qualification" on line 1 should be plural. On line 2, "is deemed to be an appropriate user of" could be changed to "may administer." On line 3, "section" should read "SECTION."
- (3) In the description of SECTION 4, "the appropriate user" could be changed to "an individual."

- (4) The description of SECTION 5 should clearly state who may perform and who may supervise psychometric testing under the proposed rule, as compared with the current rule.

b. The language in s. MPSW 1.11 (1) (intro.) describes what a psychometric test is, and what the term does not apply to. It is not clear what is meant by "does not apply to." Does it mean that those activities are not "psychometric testing"? If so, the language in sub. (1) (intro.) and (a) to (c) could be combined in sub. (1) [or sub. (2) if the suggestion to create a statutory authority provision in comment 1. a. is followed], as a definition of the term "psychometric test" and the exclusions to that term. The first sentence would begin with the phrase: "In this section, 'psychometric test' means..." and the second sentence would begin with the phrase: "'Psychometric test' does not include:". The exclusions in s. MPSW 1.11 (1) (a) to (c) should be written in the singular.

c. It is unclear to whom s. MPSW 1.11 (2) (intro.) applies. Does "user" refer to the same individuals, or some of the individuals, authorized to administer a psychometric test under s. MPSW 1.11 (2m)? On line 2, "has" should be changed to "have." Is there a difference between "skills" and "abilities" or could just one term be used?

d. In s. MPSW 1.11 (2) (e), could "Integrate and view" be changed to "Analyze"? In sub. (2) (f), from whom may the person seek supervision or consultation?

e. The following comments pertain to s. MPSW 1.11 (2m):

- (1) It appears that this is where the rule attempts to establish "levels" of psychometric testing" that may be performed by various categories of persons regulated under ch. 457, Stats. This provision should be reorganized to describe the authority of, and any restrictions on, the performance of psychometric testing by each type of professional if any differences exist. Any restrictions regarding supervision, or use of the test results, should be specified. Also, if the "restricted" language in sub. (2m) (intro.) means that only the listed persons are authorized to perform psychometric testing, it would be clearer to say: "The following persons may perform psychometric testing:" and then list them.
- (2) The items in sub. (2m) (a) to (d) should be in the singular.
- (3) Subsection (2m) (a) should read: "A psychologist licensed under ch. 455, Stats."
- (4) Subsection (2m) (b) should specify the individuals who may act under the supervision of a licensed psychologist. If it includes both certified and licensed persons, they could be listed in those two groupings. If they have to meet the qualifications in subs. (2) and (3), that should be specified.
- (5) In sub. (2m) (c), "have met" should read "meet." The citation should read "sub. (3)," which will capture the introductory language to pars. (a) and (b).

- (6) In sub. (2m) (d), "someone" should be changed to "a person specified" and "has satisfied" should read "satisfies." As in the previous comment, the citation should read "sub. (3)."

f. The following comments pertain to s. MPSW 1.11 (3):

- (1) In sub. (3) (intro.), with the deletion of the first sentence, it is unclear who is covered by the phrase "A licensee of the board" on line 4. Is it the persons licensed under ch. 457, Stats., who are authorized to conduct psychometric testing under sub. (2m) (c) and (d)? Does this provision exclude certified individuals from conducting psychometric testing, even if they meet the qualifications in sub. (3) (a) and (b) or if they are acting under the supervision of a licensed psychologist under sub. (2m) (b)?
- (2) In sub. (3) (b), on line 1, what constitutes an "official declaration"? On lines 1 and 2, who is a "professional qualified to supervise psychometric testing"? On line 2, "individual" should be deleted. On line 9, "as defined" should be changed to "set forth." On line 12, what are the "requirements of sub. (2m) (c)"? Subsection (2m) (c) does not contain requirements, but specifies certain professionals who may administer psychometric tests and refers to requirements in sub. (3) (a) and (b). Is the latter the correct reference? [Note that comment 5. e. (5) suggests that this citation be changed to "sub. (3)".]

g. Why is the language in s. MPSW 1.11 (4) repealed? Is the inclusion of psychologists in sub. (2m) (b) intended to replace this language? Or, is it because persons in addition to psychologists may supervise psychometric testing? If so, should those other persons be specified here, in addition to psychologists, rather than repealing this provision?