



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE JOAN BALLWEG

Clearinghouse Rule 19-166

Report to the Legislature
Clearinghouse Rule 19-166
The Joint Committee for Review of Administrative Rules
Produced pursuant to 227.19 (6) (a), Stats.

Clearinghouse Rule 19-166, promulgated by the Wisconsin Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board (MPSW), creates rules that revise the code to update rules of professional conduct for marriage and family therapists, professional counselors, and social workers and revises the code with the purpose of clarifying existing provisions.

Description of Problem

At the request of Representative Joan Ballweg, the Joint Committee for Review of Administrative Rules (JCRAR) held an executive session on Clearinghouse Rule 19-166, relating to unprofessional conduct, on June 25, 2020. Stakeholders raised concerns that the rule included many new sections and changes to existing rules which go beyond legislative authority granted and raise constitutional concerns.

Arguments In Favor of Objection

- *The rule capriciously restricts practitioners' free speech rights.*
- *Among other reasons, the rule changes create standards placed on personal relationships outside of the profession that are arbitrarily burdensome on practitioners and go too far.*
- *The Board is taking steps beyond its granted rulemaking authority and making policy decisions which the legislature did not authorize it to make.*

Arguments Against Objection

- *The Board argues that the changes are indicative of best practices within the profession and it is an update of the profession's code of conduct.*

Action by Joint Committee for Review of Administrative Rules

On June 25, 2020, the Joint Committee for Review of Administrative Rules held an executive session on Clearinghouse Rule 19-166. The committee passed the following motion on a 6-4 vote,

objecting to the rule (YES: Nass, Ballweg, Stroebel, Craig, Neylon, Quinn; NO: Larson, Wirch, Hebl, Subeck):

Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.19 (5) (d), Stats., object to Clearinghouse Rule 19-166, relating to unprofessional conduct (Marriage and Family Therapy, Counseling, and Social Worker Examining Board), on the grounds that the proposed rule is arbitrary and capricious.

On June 25, 2020, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Ballweg, Stroebel, Craig, Neylon, Quinn; NO: Larson, Wirch, Hebl, Subeck) to introduce LRB 6303 and LRB 6313, which support the objection to Clearinghouse Rule 19-166 by the joint committee. The bills were not introduced in the 2019-20 legislative session, in accordance with 227.19 (5) (g).

On January 21, 2021, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Neylon, Stroebel, Bradley, August, Spiros; NO: Roys, Larson, Hebl, Subeck) to introduce LRB 1185 and LRB 1421, which support the objection to Clearinghouse Rule 19-166 by the joint committee. The bills were introduced as Senate Bill 31 and Assembly Bill 14 in the 2021-22 legislative session.

Passage of one of these bills in support of the JCRAR objection would permanently remove DSPS's and the MPSW Examining Board's ability to promulgate Clearinghouse Rule 19-166.