

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 95-217

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 1994.]

2. Form, Style and Placement in Administrative Code

In the second sentence, “section” should be “subsection” and, in the third sentence, “employee” should be “employee.” In the fourth sentence, “employees” should be “employees.”

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

a. This rule should be rewritten to more specifically delineate the type of sexual conduct that is a violation, especially since the statutes provide the necessary language that can be cross-referenced. For example, the rule could provide that the following, among others, are violations of practice standards: sexual assault as described in s. 940.225 (the general sexual assault statute) or 948.02, Stats. (sexual assault of a child). Note that the provision would not say a conviction of any of these offenses is required, but merely that the activity as described and defined in those sections would amount to a violation of practice standards. Criminal and other provisions in the statutes should be reviewed to determine what other statutory descriptions of prohibited sexual conduct or harassment should be referenced in this rule provision. Again, the rule does not require a conviction or even a criminal charge that the person engaged in this type of conduct, but only that, using the proof standards and procedures applicable to any other disciplinary action, such conduct as so described took place. An amended rule could provide much greater notice (due process) than just stating that licensees must refrain from “engaging in sexual contact, exposure, gratification, or other sexual behavior” or that “sexual harassment of co-workers or employees” is a violation of practice standards. There are current statutory definitions and descriptions relating to the type of conduct being dealt with and these should be reviewed. The

board also should review the practice standards of other boards to determine if there is a model on which to base its rule.

b. In the third sentence of the rule, why is the phrase “prior or current” used? Is the intent of this phrase to apply the provision to “sexual assaults” of patrons which occurred prior to the effective date of the rule? It is difficult to determine what exactly is intended here.

c. The board may want to separate out sexual conduct, such as sexual contact, and sexual harassment into separate subsections and provide a better description of the type of conduct which is a violation of practice standards (perhaps, along the lines of the suggestions in par. a., above).