



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 04-105

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.]

1. Statutory Authority

a. It appears that the rule does not conform to several statutory requirements applicable to athletic trainers. Section 448.956 (1) (am), Stats., requires an athletic trainer to notify a consulting physician as soon as possible if a patient being treated by the athletic trainer sustains new injuries. [See also s. AT 4.02 (1).] However, the rule does not require an athletic trainer to notify the referring health care provider or the licensee’s consulting physician if a patient referred by a health care provider who is not the licensee’s consulting physician sustains new injuries. In addition, s. 448.956 (4), Stats., requires that if the licensee determines that the patient’s medical condition is beyond the scope of practice of the licensee, the licensee shall refer the patient to a health care practitioner who can provide appropriate treatment to the patient. [See also s. AT 4.02 (2).] In contrast, proposed s. AT 4.02 (5) (d) provides that if a licensee determines that a patient’s medical condition is beyond his or her scope of practice, the licensee shall notify the referring health care provider. Although these are required elements of a protocol requirements under s. AT 4.02 (1) to (4), it is not clear that a licensee is required to follow the protocol established between the licensee and his or her consulting physician when a licensee accepts a referral from a health care provider who is not the licensee’s consulting physician, nor is it clear whether this would be appropriate.

b. It appears that the rule may expand the authority of an athletic trainer beyond what is contemplated in the statutes. The rule allows an athletic trainer to treat patients referred to the athletic trainer by any health care provider in s. 146.81 (1), which includes chiropractors, dentists, athletic trainers, acupuncturists, massage therapists, podiatrists and dieticians, among

others, with apparently no oversight by a physician. This appears to conflict with the statute's framework for oversight of the trainer's activities by the consulting physician.

2. Form, Style and Placement in Administrative Code

a. The April 13, 2004, memo from the Director of the Wisconsin Legislative Council Rules Clearinghouse regarding new rule-making requirements imposed by 2003 Wisconsin Acts 118 and 145 suggests, on page 2, a format for an analysis that prefaces a rule. The format lists 13 statutorily required items. The preface of this rule should be compared to the list of items to determine which items have yet to be completed.

b. It appears that the new provisions in the rule have been placed in an inappropriate section of the existing rule. Section AT 4.02 sets forth mandatory protocol requirements, while the rule sets forth requirements relating to referrals by health care providers other than the consulting physician.

c. The introductory material in s. AT 4.02 (5) states that the subsection sets forth conditions which must be met for a licensee to accept the referral of a patient from a health care provider who is not the licensee's consulting physician. However, par. (c) does not set forth a required condition, and therefore should not be included in sub. (5). In addition, are there privacy concerns to consider with regard to the statement in par. (c) that a licensee may notify the consulting physician regarding the patient's evaluation treatment, if the patient does not have a preexisting relationship with the consulting physician?

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

In s. AT 4.02 (5) (b), "must" should be changed to "shall," and the provision regarding presentation of the protocol should be rephrased as a requirement. For example, the rule could state: "The licensee shall provide the licensee's protocol to the referring health care provider upon request."