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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?