



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-008

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 November 2011.]

2. Form, Style and Placement in Administrative Code

a. In SECTION 1, the rule language after the title should be removed, as that language is not amended in the proposed rule.

b. The agency should create SECTION 1m with the following treatment: “Med 10.01 is renumbered Med 10.01 (1).” Then, in SECTION 2, “(2)” should replace “(1)” in both the treatment clause and the body of the rule.

c. In SECTION 3, “(1)” should be deleted from the treatment clause, so that SECTION 3 is repealing and recreating s. Med 10.02, not s. Med 10.02 (1). In addition, SECTION 4 should be deleted in its entirety.

d. SECTION 5 should be numbered SECTION 4. Also, in that SECTION, the following corrections should be made:

- (1) The word “(title)” should be deleted from both the treatment clause and the text of the proposed rule, so that the SECTION is creating s. Med 10.03, not s. Med 10.03 (title).
- (2) In s. Med 10.03 (1) (title), the initial letter in “CHARACTER” should not be capitalized. [s. 1.05 (2) (c), Manual.]
- (3) In s. Med 10.03 (2) (title), the initial letters in “PATIENT CARE VIOLATIONS” should not be capitalized. [s. 1.05 (2) (c), Manual.]

- (4) In s. Med 10.03 (2) (b), the numbering of subd. “1.” should be deleted, combining the two sentences of par. (b) into one paragraph. [s. 1.03 (1), Manual.]
- (5) In s. Med 10.03 (2) (k), the numbering of subd. “1.” should be deleted, combining the two sentences of par. (k) into one paragraph. [s. 1.03 (1), Manual.]
- (6) In s. Med 10.03 (3) (title), the initial letter in “VIOLATIONS” should not be capitalized. [s. 1.05 (2) (c), Manual.]
- (7) In s. Med 10.03 (3) (i), the format for the numbering of the subdivisions should be corrected to “1.” and “2.”. [s. 1.03 (2) (e), Manual.]

e. SECTION 6 should be numbered SECTION 5, and, in that SECTION, a period should be inserted after the title, and “the” at the beginning of the sentence should be capitalized.

f. The introductory clause that enumerates the rule provisions treated by the proposed order should be updated to reflect the revisions noted in comments b. to d. of this section. [s. 1.02 (1), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the “comparison with rules in adjacent states” section of the analysis, a brief description of the other states’ regulations for unprofessional conduct by physicians should be included.

b. In s. Med 10.02 (intro.), “this chapter” should replace “these rules”. [ss. 1.01 (7) (a) and 1.07 (2), Manual.]

c. In s. Med 10.02 (8), “s. 146.81 (4), Stats.” should replace “s. 146.82 (4), Stats.”.

d. In s. Med 10.03 (2) (a) 1., the reference to s. 655.02, Stats., should be removed, because that is an invalid statute section. It is unclear what section is intended for that reference.

e. In s. Med 10.03 (2) (L), the reference to “as set forth in s. BC 2.03” is unclear. Are the practice standards under s. BC 2.03 intended to apply to the medical director or physician, or to a non-physician? If intended to apply to a medical director or physician, “practice standards under s. BC 2.03” should replace “standard of minimal competence”, and “as set forth in s. BC 2.03” should be deleted. If intended to apply to non-physicians, “who must meet the practice standards under” should replace “as set forth in”.

f. In s. Med 10.03 (3) (e), “Med 21.03” should replace “Med 21”. Alternatively, “ch.” could replace “s.” [s. 1.07 (2), Manual.]

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

a. Throughout the rule-making order, each numbered text “SECTION” should appear in small caps font as “SECTION”. [s. 1.04, Manual.]

b. In the introductory clause that enumerates the rule provisions treated by the proposed order, a comma should be inserted before “relating”. [s. 1.02 (1), Manual.]

c. In the “explanation of agency authority” section of the analysis, the following corrections should be made:

- (1) The period after “via” should be deleted.
- (2) The space between “sub” and “chapter” should be deleted, to create the word “subchapter”.
- (3) The two references to “Wis. Admin. Code” should be deleted. [s. 1.07 (2), Manual.]
- (4) “Chapter” should replace the first instance of “ch.” [s. 1.07 (2), Manual.]

d. In the “plain language analysis” section of the analysis, the following corrections should be made:

- (1) “Wis. Admin Code” should be deleted. [s. 1.07 (2), Manual.]
- (2) “Chapter” should replace “Ch.” [s. 1.07 (2), Manual.]
- (3) The word “deleting” should replace “delete”, and “augmenting” should replace “augment”.
- (4) The period after “augment” should be deleted.
- (5) In the description of SECTION 2, “a” should replace “an”.
- (6) The description of SECTION 4 should be deleted, and the description of SECTION 5 should be renumbered SECTION 4. [See comments 2. c. and d.]

e. In the “summary of factual data and analytical methodologies” section of the analysis, the following corrections should be made:

- (1) In the second sentence, the word “to” should be inserted before “the full Medical Examining Board”.
- (2) In the third sentence, “recommended” should replace “recommend”.
- (3) In the last sentence, “were” should be deleted, and a period should be inserted at the end of the sentence.

f. In the “place where comments are to be submitted” section of the analysis, the deadline for submitting comments should be filled in.

g. In s. Med 10.01 (title), the period after “intent” should not be underscored because it is not new text. [s. 1.06 (1), Manual.]

h. In s. Med 10.01 (2) [in SECTION 2], “Act” should not be capitalized.

i. In SECTION 3, it appears that the defined words “adequate supervision”, “direct, immediate, one-to-one supervision”, “direct, on-premises supervision”, and “general supervision” are not used in the proposed rule. If these words are not used in the proposed rule,

it is not necessary to define them. [See also comment k., below.] In addition, consider whether a definition should be created for a “standard of minimally competent medical practice” or “standard of minimal competence”, as that standard is referred to in the proposed rule but appears to be undefined.

j. In s. Med 10.02 (4), “between the person being supervised and the supervisor” should be inserted after “contact”.

k. In s. Med 10.02 (5), in the first sentence, could “direct, on-premises supervision” (as defined in s. Med 10.02 (4)) replace “direct, on-premises or direct face-to-face contact between the supervisor and person being supervised as necessary”? In the second sentence, “shall” should replace “is required to”, and “may” should replace “can”. [s. 1.01 (2), Manual.]

l. In s. Med 10.02 (6), “given” should replace “set forth”. [s. 1.01 (7) (d), Manual.]

m. In s. Med 10.02 (8), “has the meaning given” should replace “means a health care record as set forth”. [s. 1.01 (7) (d), Manual.]

n. In s. Med 10.02 (9), “has the meaning given” should replace “means contact as defined”. [s. 1.01 (7) (d), Manual.]

o. In s. Med 10.02 (10), “has the meaning given” should replace “means conduct as defined”. [s. 1.01 (7) (d), Manual.]

p. In s. Med 10.03 (intro.), the following corrections should be made:

(1) “The term” should be deleted.

(2) The word “unprofessional” should be capitalized.

(3) The word “includes” should replace “is defined to mean and include, but not be limited to,”. [s. 1.01 (7) (c) and (d), Manual.]

(4) A comma should be inserted after “following”.

q. In s. Med 10.03 (1) (b), it appears that “applying for or procuring a medical license, by examination for a medical license” should replace “applying, procuring or by examination for a medical license” to make the paragraph more readable.

r. In s. Med 10.03 (1) (i), should “or” be added before “certification”?

s. Section Med 10.03 (1) (k) should be numbered s. Med 10.03 (1) (j), and, in that paragraph, “may be” should replace “maybe”. Also, it appears that the second sentence should be numbered as par. (k).

t. In s. Med 10.03 (2) (a), the following corrections should be made:

(1) In subd. 1., “a finding, order, or judgment issued by” should replace “any document demonstrating that”, and “finding” should replace “has found”.

(2) In subd. 1., if “panel” is described using a statutory reference, a comma should be inserted after “court”, and the comma after “panel” should be deleted. [See comment 4. d.]

- (3) In subd. 1., “paragraph” should replace “subsection”. [s. 1.07 (2), Manual.]
- (4) In subd. 2., “finding, order, or judgment” should replace “decision”, and “court or” should be inserted before “agency”.
- (5) In subd. 2., consider whether “determining whether a physician has been negligent in the course of practicing medicine or surgery” should replace “making relevant legal determinations”.
- (6) In subd. 2., “its” should be inserted after “evidence of”, and “contained therein” should be deleted. [s. 1.01 (9) (c), Manual.]

u. In s. Med 10.03 (2) (b), “for any period covered by the order” should replace “at the time the order was entered”.

v. In s. Med 10.03 (2) (f) (intro.), “a” should be inserted after “obtaining”, and “substance” should replace “substances”. In addition, should “permitted” or “provided” replace “prohibited”?

w. In s. Med 10.03 (2) (f) 1., “finding, order, or judgment” should replace “decision”. Also, “its” should be inserted after “evidence of”, and “contained therein” should be deleted. [s. 1.01 (9) (c), Manual.]

x. In s. Med 10.03 (2) (f) 2., “a finding, order, or judgment” should replace “any document”. Also, “paragraph” should replace “section”. [s. 1.07 (2), Manual.]

y. In s. Med 10.03 (2) (g) 2. and 3., “be considered” should replace both instances of “continue to be”. In addition, “paragraph” should replace “subsection” in both subdivisions. [s. 1.07 (2), Manual.]

z. In s. Med 10.03 (2) (g) 4., the phrase “, but not limited to,” should be deleted. Also, it appears that this subdivision is an incomplete sentence. Should “is a violation of this paragraph” be inserted at the end of the sentence? Or, should the subdivision be numbered as a subsection? If so, “A physician” should be deleted, and “engaging” should be capitalized.

aa. In s. Med 10.03 (2) (j), “Subject to and limited by s. 448.30, Stats.,” should be deleted; “performing” should be capitalized; and “under s. 448.30, Stats.” should be inserted after “consent”.

bb. In s. Med 10.03 (2) (k) 1., the period between the two sentences should be replaced with a comma, and “If” should not be capitalized. In addition, “rule” should be replaced with “chapter”. [s. 1.07 (2), Manual.]

cc. In s. Med 10.03 (2) (m), “a” should be inserted after “Prescribing”; “substance” should replace “substances”; and “described” should replace “defined”.

dd. In s. Med 10.03 (2) (n), it appears that “be” should replace “are”. In addition, it appears that “paragraph” should replace “subsection”. [s. 1.07 (2), Manual.]

ee. In s. Med 10.03 (2) (o) (intro.), “Abandoning a patient.” should be inserted before “Patient abandonment”.

ff. In s. Med 10.03 (2) (o) 3., reverse the order of the two phrases to appear as follows: “The physician fails to provide for continuity of prescription medications, if the medications are necessary to avoid unacceptable risk of harm.”.

gg. In s. Med 10.03 (3) (b), “within the federal government” should be deleted or revised as it is unclear what it means in that sentence.

hh. In s. Med 10.03 (3) (c), “federal” should be inserted before “agency or authority”, and “within the federal government” should be deleted. Also, what does “become subject to adverse action” mean? Does that mean only an adverse determination, or does it include investigation?

ii. In s. Med 10.03 (3) (e), “under” should replace “as required by”.

jj. In s. Med 10.03 (3) (f), “under” should replace “as defined in”, and a space should be inserted between “s.” and “448.115”.

kk. In s. Med 10.03 (3) (i) (intro.):

- (1) The word “par.” should replace “s. 10.03 (3)”. [s. 1.07 (2), Manual.]
- (2) Does “state law or rule” apply only to Wisconsin law or to the laws of other states as well? If “state law or rule” is intended to apply only to Wisconsin law, “any laws or rules of this state or any federal law or regulation” should replace “any federal or state law or rule”. If “state law” is intended to apply to the laws of other states as well, “any laws or rules of this state, or of any other state, or any federal law or regulation” should replace “any federal or state law or rule”.
- (3) The phrase “is substantially related” should replace “may relate”, in order to be consistent with subd. 2.

ll. In s. Med 10.03 (3) (i) 1., consider whether “determining whether a person has violated a law or rule” should replace “making legal determinations”. In addition, “paragraph” should replace “subsection”. [s. 1.07 (2), Manual.]

mm. In s. Med 10.03 (3) (j), “conduct” should replace “following so”. In addition, “any statute listed in Table 10.03.” should replace “any of the following:”.

nn. In Table 10.03:

- (1) The word “, Stats.” should be removed from the first five entries.
- (2) In the entry for s. 940.19, Stats., “or” should replace “and”.
- (3) In the entry for s. 948.03 (2), Stats., “(a), (b) or (c)” should be deleted.