

Clearinghouse Rule 15-082

STATE OF WISCONSIN
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL
COUNSELING, SOCIAL WORKER EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MARRIAGE AND FAMILY THERAPY,
MARRIAGE AND FAMILY THERAPY, : PROFESSIONAL COUNSELING,
PROFESSIONAL COUNSELING, : SOCIAL WORKER EXAMINING BOARD
SOCIAL WORKER EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Marriage and Family Therapy, Professional Counseling, Social Worker Examining Board to repeal MPSW 1.03, 1.04 (2) (intro), (a) and (b), 1.05 (1) and (3), 1.05 (7), 1.06 (1), (2), (3), (4), (5), (6) and (7), 1.07, 1.08; to amend 1.05(6), 1.06 (intro); to create 1.035, 1.085, relating to rules, application, exam and renewal procedures.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 15.08 (5) (b), 440.08 (3) (b), 457.20(3), Stats.

Statutory authority: ss. 15.08 (5) (b), 440.071 (1), 440.08 (3) (b), Stats.

Explanation of agency authority:

The board shall promulgate rules for its own guidance and for the guidance of the profession and define and enforce professional conduct and unethical practices not inconsistent with the law relating to pharmacy. s. 15.08 (5) (b), Stats.

The board may not require a person to complete any postsecondary education or other program before the person is eligible to take an examination for a credential the board grants or issues. s. 440.071 (1), Stats.

The board may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established in chapter 457, that the examining board determines are necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the examining board. s. 440.08 (3) (b), Stats.

Related statute or rule: s. SPS 4.11

Plain language analysis:

Section 1 and 2 repeals the current rule-making procedure and creates a new procedure. The rules committee is deemed by the board to be obsolete. The Sections of the Board will still propose and draft the rules applying to individual professions and hold the public hearings while the Board will draft rules and hold public hearings for the matters the board deems as a joint interest.

Section 3 repeals the provisions requiring all application requirements prior to sitting for the examination. 2013 Act 113 prohibits a board from requiring the education be completed prior to the taking the examination. This section removes the requirement of education be completed prior to taking the examination. In addition, this section removes the obsolete requirement that all application materials be submitted 60 days prior to the examination.

Section 4 repeals the obsolete provision regarding the examination be administered at least once a year. The board relies on national examinations with the providers controlling the dates the examination is administered. All of these tests are available multiple times a year.

This section also removes the provision that states the examination consists of a two part examination. In essence it states that the board will give two examinations and call it one examination with two parts. There is no statutory requirement for applicants to pass an examination on the state laws (with the exception of an applicant who holds a social worker training certificate or is applying via reciprocity). An Attorney General Opinion (OAG 4-99) states the Examining Board may not require applicants of reciprocal certificates to pass an examination covering state law in the absence of a statutory requirement. Following that opinion the Board sought and obtained the statutory requirement for those applying by reciprocity to pass an examination on the state laws, however, no statutory change was made for those applying for an initial credential. The Board is removing the requirement for an examination on state law in order to not continue enforcing a requirement or threshold not contained in statute.

Section 5 clarifies the board determines the passing score on examinations to determine competence and may adopt the recommended passing score of the examination provider.

Section 6 repeals the provision that if the examination on state laws was taken by a holder of a one of the social worker credentials in the last 5 years and is applying for a different credential, the person does not need to retake the test. This provision is unnecessary with the repeal of the requirement relating to the examination on state law.

Sections 7 and 8 provide for an applicant who fails an examination may request a review pursuant to the policies of the examination provider. The rest of the provisions are repealed as being obsolete due to the review not being conducted by the board or department.

Section 9 repeals the obsolete provision relating to claims of examination error as the test is a national examination and not a board written examination.

Sections 10 and 11 repeals the credential renewal procedure and creates clarity to a renewal and reinstatement process.

Renewal within 5 years requires an application, fee, including applicable late fee, and certification of completion of required continuing education.

Renewal after 5 years requires an application, fee, late fee and evidence of either an active credential in good standing in another state or completion within the preceding 2 years of 60 hours of approved continuing education, including 8 hours of professional ethics and boundaries.

Reinstatement applies to the person who has unmet disciplinary requirements but has not renewed his or her credential within 5 years or has a credential which has been surrendered or revoked. The person may apply for reinstatement by submitting evidence of completion of the renewal after 5 years requirements if the credential has not been active with the preceding 5 years, completion of any applicable disciplinary requirements and a showing of rehabilitation or change in circumstances which warrants reinstatement of the credential.

Summary of, and comparison with, existing or proposed federal regulation: None

Comparison with rules in adjacent states:

Illinois: Illinois requires marriage and family therapist education to be completed prior to examination. Completion of education prior for examination is not required for professional counselors or social workers. A credential may be renewed within 5 years by payment of fees and proof of completion of continuing education. Renewal of a credential after 5 years requires payment of fees, proof of completion of continuing education and either evidence of active practice in another state or proof of passing of the examination during the time the license was lapsed.

Iowa: Iowa does not require marriage and family therapists, mental health counselors or social workers to complete education prior to examination. A credential may be renewed within five years pay fees and verification of continuing education. After five years marriage and family therapists and mental health counselors may renew upon payment of fees and verification of 80 hours of continuing education. After five years social workers may renew upon payment of fees, verification of continuing education and passing of the ASWB examination within last five years at the appropriate credentialing level. Reinstatement of a credential after revocation, suspension or surrendered may not be made until one year after the order or surrender and application shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension or surrender no longer exists and it will be in the public interest for the license to be reinstated

Michigan: Michigan requires marriage and family therapy education prior to taking the examination. Professional counselors and social workers do not need to complete education prior to the examination. Marriage and family therapists and professional counselors may renew their credentials within three years by payment of fees and after three years by payment of fees

and proof of licensure in another state or pass the examination. Social workers may renew their credentials within three years by the submission fees and proof of completion of continuing education.

Minnesota: Minnesota requires marriage and family therapy education prior to the examination. Professional counselors and social workers may complete examination prior to education. Marriage and family therapist may renew within 5 years by payment of fees and proof of completion of continuing education and after five years by payment of fees, proof of continuing education and passing the exam. Marriage and family therapy revoke credentials may be restored for reasons the board considers sufficient. Professional counselors may renew within two years by payment of fee and continuing education and after two years by meeting current initial requirements. Social workers may renew within one year by payment of fees, proof of meeting continuing education and supervision requirements and after one year by meeting current initial requirements.

Summary of factual data and analytical methodologies:

The Board implemented 2013 Act 114. In addition, the Board reviewed the rules to bring the rules into compliance with statutes and remove obsolete provisions.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to

Sharon.Henes@wisconsin.gov. Comments must be received at or before the public hearing to be held on November 30, 2015 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. MPSW 1.03 is repealed.

SECTION 2. MPSW 1.035 is created to read:

MPSW 1.035 Rule-making. (1) Each section shall be responsible for proposing and drafting rules applying to its profession, and for holding public hearings on those rules. The board may approve and adopt rules proposed by any section of the board.

(2) The board shall be responsible for promulgating rules applying to matters that the board determines are of joint interest.

SECTION 3. MPSW 1.04 (2) (intro), (a) and (b) are repealed.

SECTION 4. MPSW 1.05 (1) and (3) are repealed.

SECTION 5. MPSW 1.05 (6) is amended to read:

~~**MPSW 1.05(6)** Applicants shall pass each part of the examination. An applicant who fails either part I or part II of the examination shall retake that part of the examination. The passing grade on each part of the examination is determined by the board to represent competence sufficient to protect the public health, safety and welfare. The board may adopt the recommended passing score of the examination provider for part I of the examination.~~

SECTION 6. MPSW 1.05 (7) is repealed.

SECTION 7. MPSW 1.06 (intro) is amended to read:

MPSW 1.06 Examination review procedure for all sections of the board. An applicant who fails an examination may request a review of the examination, as permitted by the examination provider. ~~If a review is permitted, the following conditions apply:~~

SECTION 8. MPSW 1.06 (1), (2), (3), (4), (5), (6) and (7) are repealed.

SECTION 9. MPSW 1.07 is repealed.

SECTION 10. MPSW 1.08 is repealed.

SECTION 11. MPSW 1.085 is created.

MPSW 1.085 Credential renewal and reinstatement procedures. (1) RENEWAL BY EXPIRATION DATE. A credential holder shall renew the credential by the expiration date by

paying the renewal fee determined by the department under s. 440.03(9)(a), Stats. and attesting to completion of the continuing education required under s. MPSW 19.02.

(2) RENEWAL WITHIN 5 YEARS. If the credential is renewed after the expiration date and within 5 years of the expiration, a credential holder shall renew the credential by paying the renewal fee determined by the department under s. 440.03(9)(a), Stats., attesting to completion of the continuing education required under s. MPSW 19.02. and pay a late renewal fee.

(3) RENEWAL AFTER 5 YEARS. This subsection does not apply to credential holders who have unmet disciplinary requirements or whose credentials have been surrendered or revoked. A credential holder who has failed to renew a credential within 5 years after the renewal date holds an expired credential and may not reapply for the credential using the initial application process. A credential may be renewed after 5 years by complying with all of the following:

(a) Payment of the renewal fee determined by the department under s. 440.03(9)(a) and the late renewal fee.

(b) Evidence of one of the following:

1. An active credential in good standing in another state.

2. Completion of 60 hours of approved continuing education, including 8 hours of professional ethics and boundaries, within the preceding 2 years.

(4) REINSTATEMENT. A credential holder who has unmet disciplinary requirements and failed to renew the credential within 5 years or whose credential has been surrendered or revoked may apply to have the credential reinstated in accordance with all of the following:

(a) Evidence of completion of the requirements in sub. (3) if the credential has not been active within the last 5 years.

(b) Evidence of completion of disciplinary requirements, if applicable.

(c) Evidence of rehabilitation or change in circumstances, warranting reinstatement of the credential.

SECTION 12. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
