

Clearinghouse Rule 19-114

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY AND
DEPARTMENT OF SAFETY AND : PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal SPS 8.02 (5), (6) (e), and 8.03 (2), and to amend SPS 6.01 (2), 6.02, 6.03 (8), 6.04 (title), (1), and (2), 6.06 (title), (1), and (3), 6.07 (title), (1), (2), (5), (6), and (7), 6.08, 6.09 (1), (2), (4), and (5), 6.10 (1), and (3)(a), and 6.11 (1) and (2), relating to uniform disciplinary procedures for the department and all affiliated credentialing boards.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 227.51 (3) and 440.205, Stats.

Statutory authority:

Sections 227.11 (2) (a), 440.03 (1), and 440.205, Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats., provides the Department of Safety and Professional Services authority to promulgate rules interpreting the provisions of any statute the department enforces or administers.

Section 440.03 (1), Stats., provides that “[t]he department may promulgate rules defining uniform procedures to be used by the department, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board, for receiving, filing, and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.”

Section 440.205, Stats., provides that, “[t]he department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.”

Related statute or rule:

None.

Plain language analysis: The rule revises ch. SPS 6 to allow for the summary limitation of credentials. The rule also revises ch. SPS 8 to allow for the issuance of administrative warnings for minor violations regardless of whether the minor violation was a first offense.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Summary of public comments and feedback on the statement of scope:

A preliminary public hearing on scope was held on July 12, 2019. No comments were received.

Comparison with rules in adjacent states:

Illinois:

The Illinois Division of Professional Regulation of the Department of Financial and Professional Regulation has the authority “to revoke, suspend, refuse to renew, place on probationary status, or take other disciplinary action as authorized in any licensing Act administered by the Department with regard to those licenses, certificates, or authorities.” (20 ILCS 2105-15 (a) (5)). There is no specific provision for summary suspension or limitation, or the issuance of administrative warnings.

Iowa:

Iowa allows a board to suspend a license “in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudication order.” (IAC 193-7.36). Iowa administrative code does not specifically provide for administrative warnings.

Michigan:

The Michigan Administrative Procedures Act allows for summary suspension of a license upon a finding that the public health, safety, and welfare requires emergency action. It does not specifically provide for summary limitation of a credential. (MCL 24.292 (2)). Michigan law does not expressly allow for administrative warnings.

Minnesota:

Health-related licensing boards must issue an order temporarily suspending a licensee’s authority to practice when a complaint is received and supported by probable cause to believe the regulated person has violated a statute or rule that the health-related licensing

board is empowered to enforce, and continued practice by the regulated person presents an imminent risk of serious harm. (Minn. Stats. 214.077). It does not appear that other licensing boards or agencies in Minnesota have this authority, nor does it appear that administrative warnings are specifically provided for.

Summary of factual data and analytical methodologies:

Agency staff reviewed the statutory changes enacted by 2017 Wisconsin Act 328 and revised chs. SPS 6 and 8 to bring the rules into compliance with the new statutory requirements.

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

The rule was posted for 14 days to receive public comment on economic impact. No comments were received.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the hearing scheduled for 11:00 AM on October 1, 2019 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 6.01 (2) is amended to read:

SPS 6.01 (2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension or limitation of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

SECTION 2. SPS 6.02 is amended to read:

SPS 6.02 Scope. This chapter governs procedures in all summary suspension or limitation proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

SECTION 3. SPS 6.03 (8) is amended to read:

SPS 6.03 (8) “Respondent” means a licensee who is named as respondent in a petition for summary suspension or limitation.

SECTION 4. SPS 6.04 (title), (1), and (2) are amended to read:

SPS 6.04 Petition for summary suspension or limitation.

(1) A petition for a summary suspension or limitation shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension or limitation of the respondent's license.

(2) A petition for a summary suspension or limitation order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

SECTION 5. SPS 6.06 (title), (1), and (3) are amended to read:

SPS 6.06 Issuance of summary suspension or limitation order.

(1) If the licensing authority finds that notice has been given under s. SPS 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension or limitation of the respondent's license, the licensing authority may issue an order for summary suspension or limitation. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. SPS 2.04.

(3) The summary suspension or limitation order shall be effective upon service under s. SPS 6.08, or upon actual notice of the summary suspension or limitation order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against

the respondent, unless the license is restored under s. SPS 6.09 prior to a formal disciplinary hearing.

SECTION 6. SPS 6.07 (title), (1), (2), (5), (6), and (7) are amended to read:

SPS 6.07 Contents of summary suspension or limitation order. The summary suspension or limitation order shall include the following:

- (1) A statement that the suspension or limitation order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority.
- (2) Notification of the respondent's right to request a hearing to show cause why the summary suspension or limitation order should not be continued.
- (5) The identification of all witnesses providing evidence at the time the petition for summary suspension or limitation was presented and identification of the evidence used as a basis for the decision to issue the summary suspension or limitation order.
- (6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension or limitation; and
- (7) A finding that the public health, safety or welfare imperatively requires emergency suspension or limitation of the respondent's license.

SECTION 7. SPS 6.08 is amended to read:

SPS 6.08 Service of summary suspension or limitation order. An order of summary suspension or limitation shall be served upon the respondent by mail.

SECTION 8. SPS 6.09 (1), (2), (4), and (5) are amended to read:

SPS 6.09 (1) The respondent shall have the right to request a hearing to show cause why the summary suspension or limitation order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension or limitation order. The hearing shall be scheduled and heard promptly by the licensing authority or its delegate, but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension or limitation order should be continued.

(5) Immediately upon conclusion of the hearing to show cause the licensing authority or its delegate shall make findings and an order on the record. If it is determined that the summary suspension or limitation order should not be continued, the suspended or limited license shall be immediately restored.

SECTION 9. SPS 6.10 (1) and (3) (a) are amended to read:

SPS 6.10 (1) A notice of hearing commencing a disciplinary proceeding under s. SPS 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension or limitation order or the suspension or limitation shall lapse on the tenth day following issuance of the summary suspension or limitation order. The formal disciplinary proceeding shall be determined promptly.

(3)(a) An order immediately terminating the summary suspension or limitation.

SECTION 10. SPS 6.11 (1) and (2) are amended to read:

SPS 6.11 (1) A board may by two-thirds vote delegate authority to rule on a petition for summary suspension or limitation, to issue a summary suspension or limitation order, and to preside over and rule in a hearing provided for in s. SPS 6.09 through one of the following methods:

(2) In matters in which the department is the licensing authority, an administrative law judge employed by the department of administration shall rule on a petition for summary suspension or limitation, issue a summary suspension or limitation order, and preside over and rule in a hearing provided for in s. SPS 6.09.

SECTION 11. SPS 8.02 (5), (6) (e), and 8.03 (2) are repealed.

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)

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

| | | | |
|---|--|---|--|
| 1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected | | 2. Date August 29, 2019 | |
| 3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chs. SPS 6 and 8 | | | |
| 4. Subject Uniform disciplinary procedures for the department and affiliated credentialing boards. | | | |
| 5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S | | 6. Chapter 20, Stats. Appropriations Affected | |
| 7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget | | | |
| 8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A) | | | |
| 9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s.227.137(3)(b)(1). \$0 | | | |
| 10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | |
| 11. Policy Problem Addressed by the Rule 2017 Wisconsin Act 328 made statutory changes allowing for the use of summary limitation of credentials, as well as allowing the issuance of administrative warnings for minor violations regardless of whether the minor violation was a first offense. The uniform disciplinary rules applied by DSPS and its affiliated credentialing boards must be updated to conform to these statutory changes. | | | |
| 12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local government units, and individuals that may be affected by the rule. No comments were received. | | | |
| 13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local government units participated in the development of the EIA. | | | |
| 14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole. | | | |
| 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefits of implementing the rule will be to bring the agency's disciplinary procedures into conformity with state statute. If the agency does not implement the rule, its disciplinary procedures will remain out of conformity with state law. | | | |
| 16. Long Range Implications of Implementing the Rule | | | |

The long range implication of implementing the rule is to ensure that the agency's disciplinary procedures are aligned with state statute.

17. Compare With Approaches Being Used by Federal Government

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

N/A

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

The Illinois Division of Professional Regulation of the Department of Financial and Professional Regulation has the authority “to revoke, suspend, refuse to renew, place on probationary status, or take other disciplinary action as authorized in any licensing Act administered by the Department with regard to those licenses, certificates, or authorities.” (20 ILCS 2105-15 (a) (5)). There is no specific provision for summary suspension or limitation, or the issuance of administrative warnings.

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19. Contact Name

Jon Derenne, Administrative Rules Coordinatory

20. Contact Phone Number

(608) 266-0955

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements

Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No
