

Clearinghouse Rule 19-116

STATE OF WISCONSIN
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL
COUNSELING, AND SOCIAL WORK 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, AND
PROFESSIONAL COUNSELING, AND : SOCIAL WORK EXAMINING BOARD
SOCIAL WORK EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board to repeal and recreate MPSW 3.01 (5), 3.05 (5), 3.07 (6), 3.09 (6), 3.12 (1) (d), (2) (d), (3) (d), (4) (d), 3.13 (1) (c), 11.01 (5), 11.04 (4), and 16.01 (5), and to create MPSW 11.04 (4m), relating to discrimination based on arrest or conviction record.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 111.321, 111.322, and 111.335, Stats.

Statutory authority: ss. 15.08 (5) (b) and 227.11 (2) (a), Stats.

Explanation of agency authority:

“Each examining board [s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.” [s. 15.08 (5) (b), Stats.]

“Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...” [s. 227.11 (2) (a), Stats.]

Related statute or rule: None.

Plain language analysis:

2017 Wisconsin Act 278 enacted statutory changes to ch. 111, Stats., prohibiting a licensing agency from refusing to license an individual, or suspending a license, on the basis of a substantially related pending criminal charge, unless the charge is for one of certain specified crimes against a child or life and bodily security, or a violent crime against a child.

This rule project revises the MPSW code pertaining to applications in order to clarify that applicants are required to submit documentation of their conviction record, and are only required to submit documentation of a pending charge if it is substantially related and it involves a crime against a child or life and bodily security, or a violent crime against a child, as defined in s. 111.335, Stats.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

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

Comparison with rules in adjacent states:

Illinois: Marriage and family therapists, social workers, and professional counselors are regulated by the Illinois Department of Financial and Professional Regulation.

The rules of professional conduct for marriage and family therapists provide that a therapist convicted of any crime, or who engages in conduct which could lead to a conviction, related to the therapist's qualifications or professional responsibilities may be subject to disciplinary action. (s. 1283.100 Professional Conduct).

The rules of professional conduct for social workers provide that the division may revoke, refuse to issue, or renew a license or take other disciplinary action if a social worker providing services or supervising services commits any dishonest, corrupt, or fraudulent act that is substantially related to the social worker's functions or duties. (s. 1470.96 Unethical, Unauthorized, and Unprofessional Conduct).

The Department of Financial and Professional Regulation code does not provide for disciplinary action against professional counselors who face charges or have a conviction record.

Iowa: The Board of Behavioral Science within the Iowa Department of Public Health regulates marital and family therapists and mental health counselors. Marital and family therapists and mental health counselors may be disciplined if convicted of a crime related to the profession, or a crime that would affect the ability to practice within the profession (Iowa Administrative Code s. 645.33.2). There is no provision in the rules to discipline a licensee who merely has a pending charge.

The Board of Social Work within the Iowa Department of Public Health regulates social workers. Social workers may be disciplined if convicted of a crime related to the profession, or a crime that would affect the ability to practice within the profession (Iowa Administrative Code s. 645.283.2). There is no provision in the rules to discipline a licensee who merely has a pending charge.

Michigan: The Michigan Department of Licensing and Regulatory Affairs regulates marriage and family therapists, professional counselors, and social workers. Individuals licensed under the Michigan Public Health Code (including marriage and family therapists, professional counselors, and social workers) must be “of good moral character.” (MCL 333.16174 (1) (b)). The agency may consider a judgment of guilt in a criminal prosecution or a judgment in a civil action in determining whether an individual is of good moral character. The individual can provide evidence showing that they are of good moral character to rebut a previous criminal or civil judgment (MCL 338.42).

Minnesota: The Minnesota Marriage and Family Therapy Board regulates marriage and family therapists. The board may suspend, revoke, condition, limit, qualify, or restrict a license if the individual is convicted of a crime that renders the person unfit to practice marriage and family therapy. These crimes are enumerated in 5300.0330 Sup. 2 of the Minnesota Administrative Rules.

The Minnesota Board of Behavioral Health and Therapy regulates professional counselors. A professional counselor may not violate any law in which the facts giving rise to the violation involve the practice of professional counseling.

The Minnesota Board of Social Work regulates social workers. The Board’s rules have all been repealed and codified into statute. Section 148E.210 of the Minnesota Statutes provides that the board may take action against a social worker who “engages in acts or conduct adversely affecting the applicant or licensee’s current ability or fitness to engage in social work practice, whether or not the acts or conduct occurred while engaged in the practice of social work.”

Summary of factual data and analytical methodologies:

The MPSW board reviewed and seeks to revise its rules to bring them into compliance with the statutory changes enacted by 2017 Wisconsin Act 278.

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 for economic comments, and none 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:

Sharon Henes, 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 608-261-2377; email at DSPSAdminRules@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 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 15, 2019 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. MPSW 3.01 (5) is repealed and recreated to read:

MPSW 3.01 (5) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of a social worker.

(b) The applicant has been convicted of a crime substantially related to the practice of a social worker.

SECTION 2. MPSW 3.05 (5) is repealed and recreated to read:

MPSW 3.05 (5) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of an advanced practice social worker.

(b) The applicant has been convicted of a crime substantially related to the practice of an advanced practice social worker.

SECTION 3. MPSW 3.07 (6) is repealed and recreated to read:

MPSW 3.07 (6) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of an independent social worker.

(b) The applicant has been convicted of a crime substantially related to the practice of an independent social worker.

SECTION 4. MPSW 3.09 (6) is repealed and recreated to read:

MPSW 3.09 (6) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of a licensed clinical social worker.

(b) The applicant has been convicted of a crime substantially related to the practice of a licensed clinical social worker.

SECTION 5. MPSW 3.12 (1) (d) is repealed and recreated to read:

MPSW 3.12 (1) (d) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of a social worker.

(b) The applicant has been convicted of a crime substantially related to the practice of a social worker.

SECTION 6. MPSW 3.12 (2) (d) is repealed and recreated to read:

MPSW 3.12 (2) (d) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of an advanced practice social worker.

(b) The applicant has been convicted of a crime substantially related to the practice of an advanced practice social worker.

SECTION 7. MPSW 3.12 (3) (d) is repealed and recreated to read:

MPSW 3.12 (3) (d) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of an independent social worker.

(b) The applicant has been convicted of a crime substantially related to the practice of an independent social worker.

SECTION 8. MPSW 3.12 (4) (d) is repealed and recreated to read:

MPSW 3.12 (4) (d) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of a clinical social worker.

(b) The applicant has been convicted of a crime substantially related to the practice of a clinical social worker.

SECTION 9. MPSW 3.13 (1) (c) is repealed and recreated to read:

MPSW 3.13 (1) (c) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of social work.

(b) The applicant has been convicted of a crime substantially related to the practice of social work.

SECTION 10. MPSW 11.01 (5) is repealed and recreated to read:

MPSW 11.01 (5) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of a professional counselor.

(b) The applicant has been convicted of a crime substantially related to the practice of a professional counselor.

SECTION 11. MPSW 11.04 (4) is repealed and recreated to read:

MPSW 11.04 (4) The applicant does not have a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of a professional counselor.

SECTION 12. MPSW 11.04 (4m) is created to read:

MPSW 11.04 (4m) The applicant has not been convicted of a crime substantially related to the practice of a professional counselor.

SECTION 13. MPSW 16.01 (5) is repealed and recreated to read:

MPSW 16.01 (5) Documentation necessary for the section to determine, subject to ss. 111.321, 111.322, and 111.335, Stats., whether any of the following apply:

(a) The applicant has a pending charge for an exempt offense as defined in s. 111.335 (1m) (b), Stats. or a violent crime against a child, as defined in s. 111.335 (1m) (d), Stats., which is substantially related to the practice of a marriage and family therapist.

(b) The applicant has been convicted of a crime substantially related to the practice of a marriage and family therapist.

SECTION 14. 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 26, 2019	
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) MPSW 3, 11, and 16			
4. Subject Discrimination based on arrest or conviction record.			
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)	
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" 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 278 enacted statutory changes to ch. 111, Stats., prohibiting a licensing agency from refusing to license an individual, or suspending a license, on the basis of a substantially related pending criminal charge, unless the charge is for one of certain specified crimes against a child or life and bodily security, or a violent crime against a child. This rule project revises the MPSW code pertaining to applications in order to clarify that applicants are required to submit documentation of their conviction record, and are only required to submit documentation of a pending charge if it is substantially related and it involves a crime against a child or life and bodily security, or a violent crime against a child, as defined in s. 111.335, Stats.			
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 governmental 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 benefit of this rule is to bring the MPSW code into compliance with state law as it relates to discrimination on the basis of conviction or arrest record. Failure to implement the rule may result in the MPSW code being considered out of compliance with state statute.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

16. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is that the MPSW Board's licensure requirements related to conviction or arrest record will be in compliance with state law.

17. Compare With Approaches Being Used by Federal Government

The federal government does not license marriage and family therapists, social workers, or professional counselors.

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

Illinois: Marriage and family therapists, social workers, and professional counselors are regulated by the Illinois Department of Financial and Professional Regulation.

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Fiscal Estimate & Economic Impact Analysis

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19. Contact Name

Sharon Henes

20. Contact Phone Number

(608) 261-2377

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
