

Clearinghouse Rule 21-053

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

IN THE MATTER OF RULEMAKING : 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 amend MPSW 3.12 (1), 11.04 (intro.), and 17.02 (intro.); to repeal and recreate MPSW 17.02 (4); and to create MPSW 3.125, 11.045, and 17.025 relating to application requirements for credentials.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 111.321, 111.322, 111.335, and 440.09, Stats.

Statutory authority: Sections 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:

The proposed rule revises MPSW 17 to bring the chapter into compliance with ch. 111, Stats., as it relates to discrimination in licensing based upon an arrest or conviction record. This chapter was inadvertently not revised when board otherwise updated its rules for conformity with 2017 Wisconsin Act 278 through CR 19-116.

The proposed also rule creates provisions to implement s. 440.09, Stats., as created by 2019 Wisconsin Act 143. Section 440.09, Stats., specifies the requirements for issuing expedited reciprocal credentials to service members, former service members, and the spouses of service members and former service members.

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

None.

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:

The board held a preliminary hearing on the statement of scope at its January 26, 2021 meeting. No comments were received.

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.

Illinois Statutes provide for the expedited licensure of service members and their spouses (20 ILCS 5/5-715). "Service member" includes a person whose active duty service concluded within the 2 years preceding application for licensure. A license issued to a service member or the spouse of a service member may be renewed.

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.

Rules of the Professional Licensure Division of the Iowa Department of Public Health provide for the expedited reciprocal licensure of a veteran or a spouse of an active duty service member (645 IAC 645.20.3). A reciprocal license issued to a veteran or a spouse of an active duty service member may be renewed.

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).

The Michigan Statutes provide for temporary licensure of the spouse of an active duty service member (MCL 339.213). A temporary license is valid for 6 months and may be renewed for one additional 6-month term if it is determined the licensee continues to meet the requirements for temporary licensure and needs additional time to fulfill the requirements for initial licensure.

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."

The Minnesota Statutes provide for temporary licensure of an individual who is an active duty military member, the spouse of an active duty military member, or a veteran who has left service in the 2 years preceding the date of license application (2019 Minnesota Statutes, Section 197.4552). A temporary license allows a qualified individual to perform regulated professional services for a limited length of time as determined by the applicable licensing board. During the temporary license period, the individual must complete the full application procedure as required by applicable law.

Summary of factual data and analytical methodologies:

The proposed rule was developed by reviewing the provisions of s. 440.09, Stats., as created by 2019 Wisconsin Act 143, and obtaining input and feedback from the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board.

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

The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.

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:

Kevyn Radcliffe, 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 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Kevyn Radcliffe, 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 July 20, 2021 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. MPSW 3.12 (1) is amended to read:

(1) Except as provided in MPSW 3.125, ~~The~~ the social worker section shall grant a certificate as a social worker under s. 457.08 (1), Stats., to an applicant who pays the fee required by s. 440.05 (2), Stats., and provides evidence of all of the following to the section:

SECTION 2. MPSW 3.125 is created to read:

MPSW 3.125 Reciprocal credentials for service members, former service members, and their spouses.

MPSW 3.125 The social worker section shall grant a reciprocal certificate or a license to practice social work under s. 457.08, Stats., to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09, Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

SECTION 3. MPSW 11.04 (intro.) is amended to read:

MPSW 11.04 (intro.) Reciprocal license. Except as provided in MPSW 11.045, ~~The~~ the professional counselor section shall grant a license as a professional counselor to an applicant who pays the fee required by s. 440.05 (2), Stats., and provides evidence of all of the following:

SECTION 4. MPSW 11.045 is created to read:

MPSW 11.045 Reciprocal credentials for service members, former service members, and their spouses. The professional counselor section shall grant a reciprocal a license to practice professional counseling to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09, Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

SECTION 5. MPSW 17.02 (intro.) is amended to read:

MPSW 17.02 (intro.) Reciprocal license. Except as provided in MPSW 17.025, The the marriage and family therapist section shall grant a license as a marriage and family therapist under s. 457.10, Stats., to an applicant who pays the fee required by s. 440.05 (2), Stats., and provides evidence of all of the following to the section:

SECTION 6. MPSW 17.025 is created to read:

MPSW 17.025 Reciprocal credentials for service members, former service members, and their spouses. The marriage and family therapist section shall grant a reciprocal a license to practice marriage and family therapy to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09, Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

SECTION 7. MPSW 17.02 (4) is repealed and recreated to read:

MPSW 17.02 (4) 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 8. 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)
