



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 23-061

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

a. Consider citing the same authorities in s. Gen Couns 1.01 as in the statutory authority section of the rule analysis. Specifically, s. 448.9705 (1), Stats., is not included in s. Gen Couns 1.01.

b. The incorporation of the NSGC code of ethics by reference in s. Gen Couns 1.02 requires the approval of the Attorney General. [s. 227.21 (2), Stats.] Approval by the Attorney General should be noted in the rule analysis. [s. 1.14 (2) (d), Manual.] Note the approval in the rule analysis once received.

c. It is unclear whether s. Gen Couns 2.02 complies with s. 448.9705, Stats., which allows the board to provide a temporary license to practice genetic counseling for an applicant who satisfies the requirements of licensure under s. 448.9704 (1), Stats., except for the examination requirement. As presently drafted, it appears ambiguous whether s. Gen Couns 2.02 requires evidence related to an applicant’s arrest or conviction record as required by s. 448.9704 (1) (c), Stats., because s. Gen Couns 2.02 (1) does not include a provision that is explicitly parallel to s. Gen Couns 2.01 (1) (c).

d. Section Gen Couns 4.03 (2) and (3) should be reviewed for consistency with related statutory requirements. Section Gen Couns 4.03 (2) refers to either in-person or virtual supervision, while s. 448.9701 (2) (b), Stats., refers to the “direct, on-premises supervision” of an unlicensed assistant by a genetic counselor. The agency should explain how virtual supervision may satisfy the “direct, on-premises” requirement. In s. Gen Couns 4.03 (3), the rule text refers to “practice under supervision” by a student, while s. 448.9701 (2) (c), Stats., refers to “assisting a genetic counselor”. The agency should review any substantive difference between practice and assistance, and if different, explain its authority to allow “practice” rather than “assistance”.

2. Form, Style and Placement in Administrative Code

a. Revise the plain language analysis section to remove the description of the rule as an “emergency” rule because this is the proposed permanent rule.

b. In s. Gen Couns 1.02, it may be helpful to more clearly specify the agency’s intent with regard to the incorporation of the NSGC code of ethics. For example, it could be directly connected to s. 448.9707 (2) (h), Stats., as a grounds for discipline.

c. Consider revising s. Gen Couns 1.03 (4) to remove the substantive provision relating to when a regular license is required and when the definition does not apply. [s. 1.07 (1) (d), Manual.] “Temporary basis” is not used in s. 448.9705, Stats., and thus stating that it does not apply, while helpful, is not strictly necessary. This helpful information could be included in a note below the definition.

d. Consider defining “Department” to mean the Department of Safety and Professional Services. Alternatively, reference DSPS in full in s. Gen Couns 2.01 (1) (b).

e. In s. Gen Couns 2.02 (1) (f), what does the agency intend through the use of the phrase “current certification”? Is this intended to be a substantive departure from the related phrases used in s. 448.9704 (1) (d) 3., Stats.?

f. Revise “subsection” in s. Gen Couns 3.01 (3) (intro.) to be “sub.”. In sub. (3) (b), what does the agency intend through the use of the phrase “current certification”? Is this intended to be a substantive departure from the related statutory text?

g. Consider shifting the introductory language in s. Gen Couns 4.01 (1) into s. Gen Couns 4.01 (intro.) to avoid creating only one subsection. The material in pars. (a) to (g) would then become subsections. [s. 1.10 (1) (a), Manual.]

h. Chapter Gen Couns 5 only has one section. Revise to have multiple sections or incorporate ch. Gen Couns 5 into ch. Gen Couns 4, potentially in a section just after standards of practice. [s. 1.09 (2) (a), Manual.] Additionally, consider specifying the consequences of unprofessional conduct. For example, the proposed rule could state that acts of unprofessional conduct are subject to discipline under s. 448.9707, Stats. [See, e.g., s. Psy 5.01 (intro.), Wis. Adm. Code.]

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

a. In s. Gen Couns 1.02, do not place the acronym for National Society of Genetic Counselors in parentheses. If an acronym is needed, “NSGC” must be defined. [s. 1.08 (2), Manual.]

b. In s. Gen Couns 2.01, consider moving the introductory material into sub. (1). As it is currently written, an applicant would need to satisfy subs. (1) and (2), which are two different routes to obtaining initial licensure. [See s. 1.11 (2), Manual.]

c. Do not capitalize “Department” in s. Gen Couns 2.01 (1) (b). [s. 1.06 (2), Manual.]

d. In s. Gen Couns 2.01 (1), consider specifying to whom an applicant must submit the required materials. Also, consider specifying what constitutes “evidence satisfactory to the board” for the requirements in pars. (c), (d), and (e). [s. 1.08 (1) (k), Manual.] With particular respect to par. (c), what is “satisfactory evidence” that an arrest or conviction record does not exist?

e. In s. Gen Couns 2.01 (2), consider replacing “such” with “the”. [s. 1.08 (1) (g), Manual.]

f. In s. Gen Couns 2.02 (3), “if” should be “of”.

g. In s. Gen Couns 2.02 (3) (b), revise to be in the active voice. Consider the following: “The date that is 30 days after the American Board of Genetic Counseling issues the results of the examination under s. 448.9704 (1) (d) 2., Stats.”. Alternatively, spell out “30” because if a sentence begins with a number, it must be spelled out. [s. 1.06 (3), Manual.] Also, verify the statutory reference is in the proper form.

h. In s. Gen Couns 2.02 (4), is the period of one-time renewal anticipated to be the same for all applicants? If so, this period should be specified by the rule text. Relatedly, in s. Gen Couns 2.02 (5), consider specifying how an individual applies for the renewal of a temporary license.

i. In s. Gen Couns 2.03, consider revising the reference to s. 440.09 (2m), Stats., because it limits the extent the board may request verification. Also, or alternatively, revise the statutory references to proper format. See s. OT 2.08, Wis. Adm. Code, for an example of the suggested changes.

j. In s. Gen Couns 2.04, add a quotation mark after the reference to a registered genetic counselor.

k. As referenced in s. Gen Couns 2.05 (4), is it necessary to define the term “consulting services” or to identify the types of services for which unlicensed activity will be permitted on a temporary basis?

l. In s. Gen Couns 2.05 (5), use consistent words to begin the paragraphs. Paragraphs (b) and (c) open with verbs, but the first word of par. (a) is a noun. Consider beginning par. (a) with “Holds a current certification”, or something similar. [s. 1.05 (1) (e), Manual.]

m. In s. Gen Couns 3.01, subs. (1) and (2) appear to be duplicative; consider revising to consolidate into one subsection.

n. Revise “Section” in s. Gen Couns 3.01 (4) to be “Subsection” or consider beginning the subsection with “The attestation requirement in sub. (3) . . .”. Additionally, is the exception intended to apply only to the continuing education requirement, such that it should be limited to refer to sub. (3) (a)? Also, a comma is required following “Stats.”.

o. Revise s. Gen Couns 3.01 (5) to be singular: “A licensee shall retain . . .”.

p. In s. Gen Couns 3.02, remove the period after “3.01” in sub. (2). Also, the use of less than five years and more than five years leaves a question of what happens if a renewal application is submitted exactly five years from expiration. Consider revising one of the references to five years to include exactly five years. For example, “If the licensee applies for renewal of the license five or more years after its expiration, . . .”.

q. In s. Gen Couns 3.02 (3) (a), revise the reference to requirements in s. Gen Couns 3.02 (2) (b) to be “sub. (2) (b)”. Additionally, consider whether the final sentence of sub. (2) (b) means that there are no requirements under that paragraph, and thus none under sub. (3) (a), because it explicitly does not apply to licensees who have unmet disciplinary requirements or whose licenses have been surrendered or revoked, which is the population sub. (3) applies to.

r. In s. Gen Couns 4.02, in the introductory material, revise to use the active voice. Consider deleting “that have become” to accomplish this. Also, avoid use of the phrase, “but not limited to”.

s. Throughout the proposed rule, revise to use a consistent spelling of “healthcare”.

t. In s. Gen Couns 4.02 (2) (b) (intro.), the reference to “sub. (a)” should be to “par. (a)”.

u. In s. Gen Couns 4.02 (2) (b) 1., consider revising the phrase “in all probability”.

v. Revise s. Gen Couns 4.02 (2) (b) 4., because it currently is logically circular. Consider the following: “Information in emergencies where failure to provide information would be less harmful to the patient than providing the information”. This would seem to be consistent with the idea that an emergency provides a safe harbor to not disclose information that would otherwise be required to be disclosed in a non-emergent situation.

w. Replace “their” with “the genetic counselor’s” in s. Gen Couns 4.02 (2) (b) 6. Consider adding “of the diagnosis” at the end of the sentence.

x. In s. Gen Couns 4.02 (2) (c), revise the reference to be “par. (a)”. Also, par. (a) does not require obtaining informed consent, but only to do the proper informing. Consider revising par. (a) to require obtaining a patient’s consent as well as properly informing the patient.

y. In s. Gen Couns 4.02 (3), can the agency offer an example of a longer record retention requirement “otherwise required by law”?

z. In s. Gen Couns 4.02 (3) (b), use “that” instead of “which” because the clause is vital to the statement. [s. 1.08 (1) (c), Manual.]

aa. Subject to comment 1. d., above, in s. Gen Couns 4.03, consider defining or specifying the difference between “electronic contact methods” and “virtual supervision methods”, and also between “at all times” and “immediate”. These terms are very similar and if there is not a difference, then the same term should be used consistently. However, if there are differences, those should be specified. Relatedly, what does it mean to be “available” with respect to electronic and virtual communications?

bb. In s. Gen Couns. 5.01 (intro.), capitalize “unprofessional”. Also, add a comma after “deceptive” in sub. (4), and add “the” before “public” in sub. (7). Consider the semicolon use in subs. (11), (12), and (14), which suggests the provisions could be further subdivided. Also, consider the use of “aiding or abetting” in subs. (17) and (18). Section Gen Couns 5.01 (intro.) already references aiding and abetting.