



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 23-074

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

In s. Nat Med 6.01 (1), the notwithstanding clause could potentially conflict with statutes, it is unclear what authority the board could cite in order to override a statute.

2. Form, Style and Placement in Administrative Code

a. Consider the title of ch. Nat Med 2. Sections Nat Med 2.03 and 2.04 and, possibly, 2.05 are the only provisions that relate to the scope of practice. The other provisions relate to informed consent, record keeping, and advertising. The title could be updated to include “Standards of Conduct” in addition to “Scope of Practice”. Alternatively, a new chapter could be created titled “Standards of Conduct”.

b. Consider editing s. Nat Med 2.01 (2) (f) and (g) to be the same form as pars. (a) to (e), which are types of information. For example:

(1) Section Nat Med 2.01 (2) (f) could be written as “In an emergency, information about alternate modes of treatment, if failure to provide immediate treatment would be more harmful to a patient than immediate treatment.”. Additionally, consider defining “emergency”. See s. Med 18.02 (1) for comparison.

(2) Section Nat Med 2.01 (2) (e) could be written as “Information about a possible complication or benefit not generally known to reasonably well-qualified naturopathic doctors in a similar medical classification.”.

c. In s. Nat Med 3.04 (1) (c), consider revising to be the same form as other items listed. For example, “Except as specified in par. (d), a jurisprudence exam approved by the board. A passing score is 85 percent.”. Similar review should be conducted for s. Nat Med 6.03 (1) (f).

d. In s. Nat Med 3.04 (1) (d), consider clarifying what is meant by “first renewal period”. Is the deadline meant to be before the license must be renewed? If so, consider using “on or before the renewal date specified under s. 440.08 (2) (a), Stats.”.

e. In s. Nat Med 3.05 (1) (intro.), consider ending the introductory material with “if the applicant meets any of the following conditions:”, in order to clarify that not all of the conditions must be met. [s. 1.11 (2), Manual.]

f. In s. Nat Med 3.06 (1) (a), consider revising the text to be consistent with other items listed. For example, add “Submit” to the beginning of the provision.

g. In s. Nat Med 4.03, remove the acronyms from the substantive provisions and consider defining them in a separate section. [s. 1.08 (2) (a), Manual.]

h. In s. Nat Med 5.01, the note should also state that the standard is on file at the office of the agency, in addition to the Legislative Reference Bureau. [s. 1.14 (3) (b), Manual.]

i. In s. Nat Med 6.03 (1) (g), consider clarifying what is meant by “first renewal period”. Is the deadline meant to be before the license must be renewed? If so, consider using “on or before the renewal date specified under s. 440.08 (2) (a), Stats.”.

j. In s. Nat Med 6.04 (1), consider revising the text to be consistent with other items listed. For example, add “Submit” to the beginning of the provision.

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

a. In the definition of “Modes of treatment” in s. Nat Med 1.02, consider specifying that the relevant “scope of current and acceptable standards of care” relates to naturopathic medicine. As currently drafted and used in the rule, a naturopathic doctor might be required to inform the patient of reasonable alternative modes of treatment outside the scope of naturopathic medicine. See, for comparison, s. Med 18.02 (3) for the reference to “considered by the medical profession”.

b. In s. Nat Med 2.01 (1), consider ending the first sentence with “alternate modes of treatment” rather than “treatments” because “modes of treatment” is a defined term. Also, this provision does not require the naturopathic doctor to obtain consent. It only requires informing the patient. Consider requiring the naturopathic doctor to obtain consent and consider what modes are acceptable (e.g., verbal or written).

c. In s. Nat Med 2.01 (3), consider specifying that the informed consent is refused or withdrawn “by the patient”. Also, edit the retaliation clause to be in the active voice so that the relevant actor is specified, such as “. . . , a naturopathic doctor may not threaten or carryout any retaliation against the patient”.

d. In s. Nat Med 2.01 (4), consider specifying how a patient may withdraw informed consent. Also, consider whether this provision, as written, could allow a patient to withdraw informed consent after a treatment and whether that is desirable.

e. In s. Nat Med 2.02 (3), consider replacing “practitioner” with “naturopathic doctor” because “practitioner” is not used anywhere else in the rule. If the second instance of “practitioner” is intended to include more than naturopathic doctors, then clearly specify who must be able to interpret the patient health care record.

f. In s. Nat Med 2.06, consider specifying how a licensee may clearly state the licensee’s scope of practice beyond stating the specific license held by the licensee. Consider replacing “provider” with “licensee” at the end of the sentence for clarity.

g. In s. Nat Med 3.02, consider specifying to whom an applicant must submit licensing requirements. Also, consider deleting the word “requirements”.

h. Consider alternative revisions to ss. Nat Med 3.02 (1) and 6.03 (1) (c), in order to more clearly explain the law regarding submission of information relating to pending charges and conviction record. In particular, the statutes cited by the agency delineate different disclosure requirements and legal obligations related to pending charges than those related to conviction record. The rule should be revised to recognize and explain these distinctions. Moreover, the statutes cited by the agency in the proposed rule are, generally, quite complex and it may be more useful to utilize the rulemaking process to add clarity to an applicant’s obligations and the limits placed on the agency by statute, rather than merely referring an applicant back to the applicable statutes.

i. In s. Nat Med 3.02 (2), consider editing the text to be the fee “authorized” instead of “specified”, because the statute referenced does not specify a fee.

j. In s. Nat Med 3.02 (3) and (5), consider specifying what evidence is satisfactory to the board.

k. In s. Nat Med 3.02 (6), consider specifying that the applicant must submit “evidence of” completion of a required oral examination.

l. In s. Nat Med 3.05 (1) (d), (f), and (h), consider specifying the relevant actors who must have found the applicant negligent, who diagnosed the applicant, or who took formal adverse action.

m. In s. Nat Med 3.05 (1) (j), consider aligning the exam references with those referenced in s. Nat Med 3.04 (1) and (2), rather than using the phrase “the national examination”.

n. In s. Nat Med 3.05 (4), consider revising for clarity. Is the first reference to “exam” an oral examination? Are there other grades than the final grade? Also, consider using “examination” in place of “exam” for consistency.

o. In ss. Nat Med 3.06 (1) (c) and 6.04 (3), consider acknowledging that completing the requirements may not be necessary because the continuing education requirements may not be required for a first renewal.

p. In s. Nat Med 3.06 (2), consider clarifying the meaning of “last” or consider whether the word is needed. The same comment applies to ss. Nat Med 3.06 (3) (a) and 6.04 (3) (a).

q. In s. Nat Med 3.06 (3) (b), revise the word “which” with “that”. [s. 1.08 (1) (c), Manual.] Also, consider revising “in accordance with” to clarify whether the applicant must submit the items in subds. 1. to 3.

r. In s. Nat Med 4.01 (1), consider specifying that the relevant renewal date is that of a naturopathic doctor.

s. In s. Nat Med 4.02 (1), consider whether “and related to the practice of naturopathic medicine” is necessary. Would the board approve a continuing education program that is not related to the practice of naturopathic medicine? Consider referring to sub. (2) as an exception to this requirement as well.

t. In s. Nat Med 4.02 (2), consider revising the plural to use the singular “licensee”.

u. In s. Nat Med 4.04 (1), consider acknowledging that the licensee is not required to certify completion of the continuing education requirements on the first renewal date, as is set out in s. Nat Med 4.02 (2).

v. In s. Nat Med 4.04 (2), consider specifying how a license is restored.

w. In s. Nat Med 4.05, consider explaining what is meant by “but are not limited to”. As it is written, the provision implies that there may be other records required to be maintained, but those records are not specified. Note also that the word “including” means that the identified items are not exhaustive, and if other items are intended, the phrase “but are not limited to” should be removed. [s. 1.07 (3) (b) 2., Manual.]

x. In s. Nat Med 5.02 (e) 3., add “professional” before “services” for consistency.

y. In s. Nat Med 5.02 (2) (j), review the duplicate use of “aiding or abetting”, because s. Nat Med 5.02 (intro.) already refers to the same phrase.

z. Consider revising the title of ch. Nat Med 6 to be more general, because what is included in the chapter is more than licensure requirements.

aa. In s. Nat Med 6.03, consider specifying to whom an applicant must submit licensing requirements. Also, consider deleting the word “requirements”.

bb. In s. Nat Med 6.03 (1) (b), consider editing it to be the fee “authorized” instead of “specified”, because the statute referenced does not specify a fee.

cc. In s. Nat Med 6.03 (1), consider specifying what evidence is satisfactory to the board.

dd. In s. Nat Med 6.03 (1) (i), consider specifying that the applicant must submit “evidence of” completion of a required oral examination.

ee. In s. Nat Med 6.04, consider whether there should be a subsection regarding late renewals within five years. This would be consistent with the treatment of late renewals for the full scope license.

ff. In s. Nat Med 6.06, consider whether “Conduct” should be capitalized in the title.

gg. In s. Nat Med 6.07, consider revising to use the singular naturopathic doctor.

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

In s. Nat Med 5.02 (1) (m), consider whether it would be helpful to list other protected classes to align unprofessional conduct with federal law.