

Clearinghouse Rule 12-050

STATE OF WISCONSIN
HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : NOTICE OF PUBLIC HEARING
PROCEEDINGS BEFORE THE :
HEARING AND SPEECH :
EXAMINING BOARD :
:

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Hearing and Speech Examining Board in §15.08 (5) (b), and 227.11 (2), Wis. Stats., and interpreting §459.01(1d) and 459.34(2)(d), Wis. Stats., the Hearing and Speech Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend HAS 6.18(1)(d) and to create HAS 6.175(6) relating to deceptive advertising.

Hearing Date, Time and Location

Date: January 7, 2013
Time: 1:15 p.m.
Location: 1400 East Washington Avenue
Room 121A
Madison, Wisconsin

APPEARANCES AT THE HEARING:

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 459.01(1d) and 459.34(2)(d), Stats.

Statutory authority:

Sections 15.08 (5) (b), and 227.11 (2), Stats.

Explanation of agency authority:

2009 Act 356 amended s. 459.34(2)(d), Stats., to expand and further clarify the definition of deceptive practices.

Related statute or rule:

Sections 459.01(1d) and 459.34(2)(d), Stats.

Plain language analysis:

The passage of 2009 Wisconsin Act 356 created a definition for deceptive practices which further clarifies what constitutes deceptive advertising. The new definition includes a list of specified types of representation or materials which are considered deceptive advertising if they are misleading, false or untruthful.

The Act also amends deceptive practices as a basis for professional discipline by eliminating the words false and misleading which are now included in the new definition.

This rule is amended to be consistent with the statutory changes.

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

None

Iowa

645 Iowa Admin. Code 304.2(4) defines professional incompetency as including but not limited to the use of untruthful or improbable statements in advertisements and actions by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

<http://www.legis.state.ia.us/aspx/ACODOCS/DOCS/304.2.pdf>

Illinois:

68 Illinois Admin. Code 1465.95(j) provides that the licensing authority may take disciplinary action against a speech-language pathology and audiology license based upon its finding of unethical, unauthorized or unprofessional conduct which includes “deceptive, misleading, false representation.”

<http://www.ilga.gov/commission/jcar/admincode/068/06801465sections.html>

Minnesota:

Chapter 148.5195(10), of the Minnesota Statutes, provides that disciplinary action may be taken against an audiologist for advertising in a manner that is false or misleading or engaging in conduct that is likely to deceive, defraud or harm the public.

<http://www.revisor.mn.gov/statutes/?id=148.5195>

Michigan:

The State of Michigan does not have administrative rules governing advertising by audiologists. http://www.michigan.gov/lara/0,1607,7-154-27417_2529_31491---,00.html

The comparison of the proposed rules to the adjacent states demonstrates that the proposed rules are relatively comparable to those in adjacent states.

Summary of factual data and analytical methodologies:

No additional factual data or analytical methodologies used. The modifications were prescribed by 2009 Act 356.

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

This rule creates a change in a definition to match the statutory definition created by 2009 Act 356 which does not impact small businesses. This rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units and individuals, for a period of 14 days. No comments were received relating to the economic impact of the rule.

Fiscal estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary:

There is no effect on small businesses.

Agency contact person:

Sharon Henes, Paralegal, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, Paralegal, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Sharon.Henes@wisconsin.gov. Comments must be received at or before the public hearing to be held on January 7, 2013 at 1:15 p.m. to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. HAS 6.175(6) is created to read:

“Deceptive advertising” means creating, using, or promoting the use of any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or other representation, however disseminated or published, which is misleading, false or untruthful.

SECTION 2. HAS 6.18(1)(d) is amended to read:

~~Advertised~~ Engaged in a ~~manner which is false, deceptive or misleading~~ advertising.

(END OF TEXT OF RULE)

COPIES OF RULE

Copies of this proposed rule are available upon request to Sharon Henes, Paralegal, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at Sharon.Henes@wisconsin.gov.