

Report From Agency

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

IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
MARRIAGE AND FAMILY THERAPY, : CR 15-082
PROFESSIONAL COUNSELING, :
SOCIAL WORK EXAMINING BOARD :

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS: None

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

The basis for the proposed rule is to update the Board's processes and procedures by removing obsolete provisions, clarifying and streamlining provisions including the rule-making, application and examination. In addition, the Board implemented 2013 Wisconsin Act 114 and brought the rules into compliance with statutes.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Board held a public hearing on November 30, 2015. The following people either testified at the hearing, or submitted written comments:

Larry Winter
Jeff Marks
Jolanda Sallmann
Sarah Hessenauer-Bladorn
Quintin Sullivan
Joan Groessl
Jerrold Rousseau
Cornelia Gordon-Hempe
Joe Dooley
Debra Daehn Zellmer
Tian Tian

Jeanne Wagner

Eric Alvin on behalf of National Association of Social Work-Wisconsin

The Board summarizes the comments received either by hearing testimony or by written submission as follows:

All of the testimony was from social workers who would like to keep the open book jurisprudence exam as part of the initial licensure requirements for social workers. The testimony centered on the jurisprudence exam being necessary to ensure applicants are aware of the laws governing the profession. There was testimony indicating the removal of this requirement may necessitate schools or employers providing education on Wisconsin laws.

In addition, the National Association of Social Work – Wisconsin requested further discussion and consideration be given to the renewal and reinstatement modifications.

The Board explains modifications to its rule-making proposal prompted by public comments as follows:

The Board removed the sections of the proposed rule related to renewal and reinstatement and will be addressing in a separate rule promulgation project.

The Board considered the public comments related to the jurisprudence examination and chose to give deference to the statutes. Based upon lacking specific legislative authority or explicit statutory licensure requirements, the Board is repealing the requirement for a jurisprudence exam.

Statutes are the parameters in which a rule may be written or enforced and rules may not go beyond those requirements or thresholds. An agency does not have the authority to promulgate, enforce or administer a rule that contains a standard, requirement or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision. [s. 227.11(2)(a)3., Stats.]

Sections 457.08(1)(c), (2)(c), (3)(c), and (4)(d), 457.10(4) and 457.12(4), Stats. specify an applicant is required to pass an examination approved by the specific section to determine minimum competence to practice in that profession. Marriage and Family Therapist Section, Professional Counselors Section and Social Worker Section have all designated a national examination to determine competence.

In 1999, an Attorney General's opinion was sought inquiring whether reciprocity applicants could be required to take the jurisprudence exam. OAG 4-99 indicated that the Wisconsin statutes require a person to file an application, pay a fee, have an academic degree, pass an examination demonstrating minimum competence and for some certificates have certain kinds of experience. An examining board may not deny an applicant under a reciprocity statute based upon a board rule establishing an additional qualification for licensure. If the applicant via reciprocity met the substantially equivalent requirements (application, fee, academic degree, pass an examination demonstrating minimum competence and experience), a license shall be granted. There

was no requirement for jurisprudence in the initial examination process and could not be a requirement for reciprocity applicants.

Following the Attorney General Opinion, the Board pursued legislation and 2001 Wisconsin Act 80 inserted a requirement for reciprocity applicants to take the jurisprudence. The Act did not add the jurisprudence exam to the initial license requirements.

2001 Wisconsin Act 80 also amended s. 457.16, Stats relating to examinations. In this section there was a modification to allow some professions to take an examination before the completion of their degrees. A communication in the drafting file references that the exam in this section is the national social worker exam which is used as the examining board's competency exam and it is not the exam that tests on Wisconsin law. Accordingly, it is clear that the exam testing Wisconsin law is not part of the Board's competency examination.

The statutes do explicitly state in two sections the requirement to take a jurisprudence exam. A person who holds a social worker training certificate is required to take both the national and jurisprudence exam in order to obtain the social worker certificate [s. 457.09(5) , Stats.] and all of the Board's professions applying via reciprocity are required to take the jurisprudence exam [s. 457.15, Stats.]. The statutory criteria for initial applicants does not include an exam on the knowledge of Wisconsin law.

The current rule requires initial applicants as marriage and family therapists, professional counselors and social workers to take a two part competency exam designated as the national exam and a jurisprudence exam. The plain language reading of ss. 457.08(1)(c), (2)(c), (3)(c), and (4)(d), 457.10(4) and 457.12(4), Stats. indicate an examination to determine competence. On its face, having two examinations from different providers is not two parts of the same single examination.

The current rule added a condition not contemplated in the statute and is not a correct interpretation of the law. A rule of an agency is not valid if it exceeds the bounds of correct interpretation. [s. 227.11(2)(a), Stats.]

The Board recognizes that there may be public policy reasons for requiring applicants to demonstrate knowledge in the area of Wisconsin laws, however, it is a public policy determination for the Legislature to make and not the Board or individual Sections.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS: None