

Report From Agency

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

**IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 19-166
MARRIAGE AND FAMILY THERAPY, :
PROFESSIONAL COUNSELING, AND :
SOCIAL WORK EXAMINING BOARD :**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

N/A.

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:**

This rule project revises ch. MPSW 20 to update the rules of professional conduct for marriage and family therapists, professional counselors, and social workers to bring them into line with current professional standards and revises existing provisions for conciseness and clarity.

Changes include revising the chapter to prohibit discrimination in the provision of services on the basis of gender and gender identity, ethnicity, and biological sex.

The rule also expands upon what shall be considered inappropriate sexual behavior with a client, and imposes a ban on any romantic relationship with a client, regardless of the amount of time elapsed since the clinical relationship has terminated. The rule creates a provision forbidding a credentialed person from taking unfair advantage of any professional relationship, or exploiting clients, supervisees, or students. The rule also prohibits practitioners from employing or promoting any intervention or method that has the purpose of attempting to change a person's sexual orientation or gender identity. Further, the rule prohibits the development of any personal relationship with a client, or former client, within two years of the termination of the clinical relationship, if that relationship might impact the credentialed person's objectivity.

The rule also provides a duty to notify the appropriate section within 48 hours of a criminal conviction, a duty to comply with mandatory child abuse reporting requirements under state law, and requires that credential holders obtain written informed consent from a client or the client's legal representative prior to taping, recording, or filming clinical sessions. Additionally, the rule codifies the duty of a credentialed person to cooperate with the section during investigations.

Finally, the rule creates a duty for supervisors to ensure that subordinate employees are properly supervised. Under the revised rule, supervisors would also be prohibited from unreasonably withholding documentation of an applicant's clinical training hours.

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

The Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board held a public hearing on January 28, 2020. The following people either testified at the hearing, or submitted written comments:

Marc Herstand, representing NASW WI
Shelley Gregory, representing FORGE
Dr. Jennifer C. Cook
Miranda Hassett
Suzanne van Landingham
Mary Rowe
Evelyn Gildrie-Voyles
Julaine Appling, representing Wisconsin Family Action
Patricia Nowobielski
Jon Schussman
Wesley Mrowka
Carol Brown
Michael Holzman
Betty Campbell
Kristin Smies
Kurt August
Gordon and Eileen Oksnevad
Linda Mand
Sandra and Mike Andress
Christine Weidenbenner
Jan Volkmann
Melody Steinbart
Kenneth Kamps
Michael Levenhagen
Jolene Helbig
Charlotte and Michael Nordstrum
Daun Vick
Jean Holzman

Holly Kirchner
E. Lee Webster
Nancy G. Dierauer
Nancy Olsen
Nancy Olson
Anne Franczek
Jim and Ginny Maziarka
Amanda Ohlrich
Todd Schelfhout
Rhonda Thompson
R. Jest
Mark and Teresa Richter
Sandra Wisler
Beth Langteau
Mary Scott
Shelly Aslaksen
Janet Hurguy
Heath Perry
Pamela Bull
Samantha Sopata
Wisconsin DSPS, Division of Legal Services and Compliance

The Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board summarizes the comments received either by hearing testimony or by written submission as follows:

Marc Herstand - NASW WI commented on the following:

- NASW WI supports the proposed rule. Being gay, lesbian, bisexual or transgender is not a sickness or disorder, nor is there scientific evidence to suggest that sexual orientation change efforts are effective in “curing” someone from being LGBTQ.
- The NASW WI also expressed concerns that sexual orientation change efforts can pose significant health risks, particularly to LGBTQ children, including depression, confusion, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources.

Shelley Gregory - FORGE commented on the following:

- FORGE supports the proposed rule. FORGE believes that changing the ethical standards for credential holders will protect LGBTQ+ people from the harm caused by conversion therapy, including the risk of depression, anxiety, shame, decreased self-esteem, social withdrawal, substance abuse, and suicidality.
- FORGE also points out that being LGBTQ+ is not a mental health disorder, nor is there evidence that treatments aimed at “conversion” are successful.

Miranda Hassett, Suzanne van Landingham, and Mary Rowe, commented on the following:

- Supports the proposed rule on the grounds that efforts to change gender identity or sexual orientation are harmful to the health of LGBTQ+ people.

Evelyn Gildrie-Voyles commented on the following:

- Expressed general support for the rule.

Dr. Jennifer Cook commented on the following:

- Color should not be removed as an impermissible basis for discrimination in the provision of services, as it is not obsolete. It is possible for individuals to discriminate against others based on the shade of their skin, unrelated to the person's racial or ethnic identity.
- Ethnicity should be added as an impermissible basis for discrimination in the provision of services. Ethnicity and race are connected, but not interchangeable terms.
- Sex should be retained as an impermissible basis for discrimination in the provision of services, and specified as biological sex. Biological sex assigned at birth is distinct from one's gender identity, and can result in discrimination separate from one's gender identity.

Julaine K. Appling - Wisconsin Family Action, Samantha Sopata, Rhonda Thompson, Daun Vick, Charlotte and Michael Nordstrum, Kenneth Kamps, Gordon and Eileen Oksnevad, Jon Schussman, Melody Steinbart commented on the following:

- Does not support replacing sex with gender and gender identity. Sex is one's biological makeup, not gender or gender identity.

Michael Levenhagen, Pamela Bull, Beth Langteau, Sandra Wisler, Mark and Teresa Richter, R. Jest, Todd Schelfhout, Amanda Ohlrich, Nancy Olsen, E. Lee Webster, Jean Holzman, Daun Vick, Joleen Helbig, Sandra and Mike Andress, Linda Mand, Gordon and Eileen Oksnevad, Kurt August, Kristin Smies, Betty Campbell, Carol Brown, Patricia Nowobielski commented on the following:

- Individuals should have the freedom to seek all forms of assistance in their mental health treatment, including conversion therapy if they desire. People should be free to determine for themselves the role of same-sex sexuality in their lives and identity.

Heath Perry, Rhonda Thompson commented on the following:

- LGBT individuals often struggle with mental health issues, which in some cases is caused by their sexuality, and banning conversion therapy may cause them physical and emotional harm.

Nancy Olsen, E. Lee Webster commented on the following:

- Gender transition is a permanent decision. If given a chance, many people with gender dysphoria will pass through that phase and become satisfied with the gender of their birth.

Heath Perry, Kurt August, Wesley Mrowka, and Linda Mand commented on the following:

- If there is to be a ban on conversion therapy, it should be legislative.

Julaine K. Appling – Wisconsin Family Action, Janet Hurguy, Shelley Aslaksen, Beth Langteau, Mark and Teresa Richter, R. Jest, Amanda Ohlrich, Jim and Ginny Maziarka, Anne Franczek, Rhonda Thompson, Jean Holzman, Daun Vick, Charlotte and Michael Nordstrum, Kenneth Kamps, Jan Volkmann, Mike and Sandra Andress, Linda Mand, Gordon and Eileen Oksnevad, Kristin Smies, Carol Brown, Wesley Mrowka, Jon Schussman, Patricia Nowobielski, Melody Steinbart, Christine Weidenbenner commented on the following:

- Counselors should have the professional and religious freedom to use the methods they deem appropriate in treating clients.

Nancy G. Dierauer commented on the following:

- A ban on conversion therapy would violate the American Psychological Association's Code of Conduct because it would prevent clients' access to the benefits of psychology, would diminish trust between practitioner and the client, and infringes on a client's right to self-determination.

Mary Scott, Pamela Bull, Gordon and Eileen Oksnevad commented on the following:

- Expressed general opposition to homosexuality or transgenderism.

Nancy Olson commented on the following:

- Children do not need to be educated on trans issues. They can learn about this as an adult if interested.

E. Lee Webster, Kurt August, Michael Holzman commented on the following:

- Minors should not be encouraged in a therapeutic setting to make irreversible decisions regarding their sexual development.

James and Ginny Maziarka, Holly Kirchner commented on the following:

- Expressed general opposition to making conversion therapy unprofessional conduct.

Christine Weidenbenner commented on the following:

- The rule applies regardless of whether money or services are exchanged. There should be a provision so the rule only applies to services provided in exchange for consideration.

Mike and Sandy Andress commented on the following:

- The stated purpose of the rule is to bring the chapter into line with current professional standards, however none of our surrounding states specifically prohibit conversion therapy as unprofessional conduct.
- The rule should have been publicized more widely.
- Informed consent in MPSW 20 (12) is too vague and less protective of the client.

DSPS Division of Legal Services and Compliance commented on the following:

- There is no definition of “client” or “authorized representative” in the preliminary rule draft for MPSW 20. Please consider adding a definition for clarity and consistency among the three sections.
- Consider adding a specific time period for notification in MPSW 20.02 (20). Example: Failing to notify the Board within 30 days of the imposed discipline. Without a specific time limit, it will be difficult to determine when the failure to notify occurred. In addition, clarification is needed concerning if the requirement for notification applies only to the affected credential holder who was disciplined; or, whether any credential holder has a duty to inform the board/section about discipline to any credential holder.
- Consider beginning MPSW 20.02 (31) with “Unreasonably...”

The Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board explains modifications to its rule-making proposal prompted by public comments as follows:

The Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board made the following changes:

- The word “sex” in s. MPSW 20.02 (8) is retained and revised to read as “biological sex.”
- The word “color” in s. MPSW 20.02 (8) is retained.
- The word “ethnicity” in s. MPSW 20.02 (8) is added.
- A 30-day period in which notification is required is added to MPSW 20.02 (20).
- The word “Unreasonably” is added to the beginning of MPSW 20.02 (31).

The Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board did not make modifications for the reasons below:

- The board will not amend MPSW 20.01 to add definitions for “client” or “authorized representative.” The meaning of these terms as they are used within the rule is sufficiently clear, and definition is not necessary.
- The board will not amend MPSW 20.02 (20) to clarify that the credential holder only has a duty to inform the board of pending discipline against the credential holder’s own credentials, and not the credentials of another person. The rule specifically states that it is unprofessional conduct not to inform the board of disciplinary action taken against a credential previously issued to “the credential holder.” This language is sufficiently clear.
- The board will proceed with including gender and gender identity in s. MPSW 20.02 (8) as this language is consistent with the current scientific literature and industry practice.
- The board will proceed with its proposed changes to s. MPSW 20.02 (12). Simply requiring informed consent prior to treatment, as opposed to the current non-exhaustive list of required disclosures, is more inclusive and will ensure the client is provided with all the information necessary to make important healthcare decisions.

- The board will proceed with including s. MPSW 20.02 (25) in the rule draft for the following reasons:
 - It is within the statutory authority of the board to make rules regarding the professional conduct and standards of practice for the professionals it regulates. Further, this rule project has followed all the required procedures for rulemaking under Wisconsin law, including notice and hearing requirements.
 - It is not accurate that clients and counselors would no longer be able to discuss sexual orientation or gender identity issues. A counselor will still, for example, have the ability to provide support to a client undergoing a gender transition and assistance in identity exploration or development, so long as the purpose of the counseling is not to attempt to change the client's sexual orientation or gender identity.
 - The board rejects the suggestion to add a provision making the rule applicable only to services provided to minors. The board also rejects suggestions that the rule should only apply where the credentialed person is accepting consideration in exchange for providing the service. Gender dysphoria, gender nonconformity, and homosexuality are not mental health disorders requiring treatment. Neither the client's age nor whether the client is paying for the service are relevant. It is unprofessional conduct to attempt to treat mental health disorders that do not exist, especially with ineffective and potentially harmful treatments, regardless of the client's age or whether money is changing hands.
 - The board is not persuaded by the suggestion that because surrounding states do not expressly consider this practice to be unprofessional conduct, this means that it is an acceptable practice within the profession. The consensus within the profession is that gender dysphoria, gender nonconformity, and homosexuality are not mental health disorders requiring treatment. Further, although our surrounding states do not expressly make the practice unprofessional conduct, other states do.
 - Credentialed individuals are not entitled to use treatment methods that are ineffective, harmful, and not aimed toward treating an actual mental health disorder. Nor are clients entitled to receive these services from credential holders. Clients who are interested in receiving these services are not restricted from consulting with other individuals, such as clergy or other counselors not credentialed by this board.
 - This rule change would not violate the principles of the APA's code of professional conduct. The APA applies to psychologists, not marriage and family therapists, professional counselors, or social workers. Even if the principles did govern, the APA's code of conduct requires that practitioners not harm their clients or engage in fraud or intentional misrepresentation of fact. So called "conversion therapy" treatments have the potential to cause clients great harm. Furthermore, there is no evidence these treatments are effective, nor is there actually an underlying mental health disorder that they seek to treat.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

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

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

The rule was sent to SBRRB on 12/30/19. No report has been received.