

STATE OF WISCONSIN
HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	HEARING AND SPEECH
HEARING AND SPEECH	:	EXAMINING BOARD
EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 12-050)

ORDER

An order of the Hearing and Speech Examining Board to amend HAS 6.18 (1) (d) and to create HAS 6.175 (1m) relating to deceptive advertising.

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 459.12(1), 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.

Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. The hearing and speech examining board may make rules not inconsistent with the laws of this state which are necessary to carry out the intent of ch. 459.

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

Comparison with rules in adjacent states:

The comparison information with the rules in adjacent states was obtained directly from a review of the following statutes and rules.

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 report:

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.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Greg.Gasper@wisconsin.gov or by calling (608) 266-8608.

Agency contact person:

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TEXT OF RULE

Section 1. HAS 6.175 (1m) is created to read:

HAS 6.175 (1m) “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:

HAS 6.18 (1) (d) ~~Advertised~~ Engaged in a manner which is false, deceptive or misleading advertising.

Section 3. EFFECTIVE DATE. The effective date shall be the first day of the month following publication in the Wisconsin Administrative Register.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chair

Hearing and Speech Examining Board