

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date December 26, 2019</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) MPSW 20</p>	
<p>4. Subject Unprofessional Conduct</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input checked="" type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input checked="" type="checkbox"/> Increase Costs   <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy   <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b></p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule The board did a comprehensive review of its professional standards rule and revised the chapter to bring it into line with current professional standards and to enhance conciseness and clarity.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. This rule was posted for economic comments and none were received. The Board is not aware of any licensees whose practice may be economically impacted by the change in the unprofessional conduct rules.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) None.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit of implementing the rule is that the Board's rules relating to professional conduct will be brought into conformity with current practice. The alternative of implementing the rule is to leave the code in its unrevised state, not reflecting current standards and expectations of practitioners credentialed by the board.</p>	
<p>16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is to update the code to ensure it truly reflects current practice.</p>	
<p>17. Compare With Approaches Being Used by Federal Government The federal government does not regulate professional conduct standards for social workers, professional counselors and marriage and family therapists.</p>	
<p>18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)</p>	

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Illinois: Illinois law does not prohibit sexual contact with former clients beyond two years after the termination of treatment for social workers and marriage and family therapists, and five years for professional counselors. Although Illinois law does not explicitly prohibit 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, Illinois prohibits practitioners from engaging in any action that diminishes the civil or legal rights of clients, or results in the sexual exploitation of clients.

Illinois prohibits discrimination on the basis of gender rather than sex, and does not mention "color" as a forbidden grounds of discrimination. Illinois additionally prohibits discrimination based on "choice of lifestyle."

Illinois law further requires practitioners to provide adequate supervision to subordinates, and requires practitioners to seek supervision or other assistance when necessary.

Illinois does not expressly provide for a duty to comply with Board investigations, inform the Board of any criminal convictions, or not to aid or abet unlicensed practice.

(Ill. Admin Code ss. 1283.100, 1470.96, and 1375.225).

Iowa: Social worker professional standards for conduct are determined and administered by the Iowa Board of Social Work. Rules allow for the discipline of a practitioner who negligently delegates duties or supervision of employees. The rules do not appear to expressly restrict sexual contact with a client or past client, prohibit discrimination, prohibit employing or promoting any intervention or method that has the purpose of attempting to change a person's sexual orientation or gender identity, or require notice to the board after conviction of a crime, although there is a provision requiring social workers to conform to the minimal standard of acceptable and prevailing practice within the state. (IAC s. 645.283.2).

The Iowa Board of Behavioral Science regulates professional counselors and marriage and family therapists. The rules require notification of a criminal conviction and cooperation with the Board. The rules also require the licensee not to aid or abet unlawful practice. Further, a licensee may not engage in sexual contact with a current client, or a former client for 5 years, or indefinitely, if the client has a history of any physical, emotional, or sexual abuse, or has been diagnosed with any form of psychosis or personality disorder, or if the client is likely to continue to need therapy for a chronic condition. Although the Board's rules do not expressly prohibit discrimination based on traditionally unlawful grounds, the rules do prohibit unethical conduct generally. (IAC s. 645.33.2).

Michigan: Michigan statute provides a list of provisions, the violation of which would result in penalties to a person credentialed under the Michigan Occupational Code, including social workers, professional counselors, and marriage and family therapists:

- (a) Practices fraud or deceit in obtaining a license or registration.
  - (b) Practices fraud, deceit, or dishonesty in practicing an occupation.
  - (c) Violates a rule of conduct of an occupation.
  - (d) Demonstrates a lack of good moral character.
  - (e) Commits an act of gross negligence in practicing an occupation.
  - (f) Practices false advertising.
  - (g) Commits an act which demonstrates incompetence.
  - (h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.
  - (i) Fails to comply with a subpoena issued under this act.
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- (j) Fails to respond to a citation as required by section 555.
- (k) Violates or fails to comply with a final order issued by a board, including a stipulation, settlement agreement, or a citation.
- (l) Aids or abets another person in the unlicensed practice of an occupation.

(MCL s. 339.604).

Additionally, professional counseling and marriage and family therapist licensees are prohibited by rule from performing any acts, tasks, or functions within the practice of their occupation unless trained to perform the task, act, or function in question. (MCL s. 333.18511, 333.18105).

Minnesota: Minnesota’s social work statute prohibits discrimination on the same grounds as Wisconsin, except they have not removed “color” as an unlawful basis. (Minn. Stats. 148E.215). Although the professional counselor administrative rules do not expressly prohibit discrimination on the traditionally unlawful grounds or prohibit employing or promoting any intervention or method that has the purpose of attempting to change a person’s sexual orientation or gender identity, there is a provision requiring professional counselors to conform to minimum standards of acceptable and prevailing practice. (Minn. Admin R. 2150.7600).

Personal relationships between social workers, professional counselors, and marriage and family therapists and clients are prohibited if it would create a risk of client harm or of impairing a credential holder’s objectivity or judgment. Personal relationships with former clients are prohibited if a reasonable and prudent social worker would conclude that either the former client or social worker is emotionally dependent on the other. Minnesota also prohibits sexual contact with a client, and sexual contact with a former client for at least two years after the conclusion of the professional relationship. Sexual contact with a former client is never allowed if the social worker engaged in diagnosing, counseling, or treating a client with a mental, emotional, or behavioral disorder; unless the social worker can demonstrate that they have not intentionally or unintentionally coerced, exploited, deceived, or manipulated the client, has not suggested to the client that sexual conduct is consistent with or part of the former client’s treatment, and neither the client nor the social worker are emotionally dependent on each other. (See Minn. Stats. 148E.220, Minn. Admin R. 2150.7540).

Minnesota requires social workers to report criminal convictions to the Board within 90 days. Social workers also have a duty under Minnesota law to comply with state reporting requirements relating to duty to warn, maltreatment of minors, and maltreatment of vulnerable adults. (Minn. Stats. 148E.240). Social workers are also obligated to fully cooperate with board investigations. (Minn. Stats. 148E250).

Finally, social workers have an affirmative duty to seek supervision or consult when appropriate or necessary for competent practice, and an affirmative duty not to delegate tasks that a supervisor reasonably should know the individual is not competent to perform. (Minn. Stats. 148E.200).

19. Contact Name Jon Derenne, Administrative Rules Coordinator	20. Contact Phone Number (608) 266-0955
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**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
  - Less Stringent Schedules or Deadlines for Compliance or Reporting
  - Consolidation or Simplification of Reporting Requirements
  - Establishment of performance standards in lieu of Design or Operational Standards
  - Exemption of Small Businesses from some or all requirements
  - Other, describe:
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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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