

STATE OF WISCONSIN
HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF RULE-MAKING	:	NOTICE OF TIME PERIOD
PROCEEDINGS BEFORE THE	:	FOR COMMENTS FOR THE
HEARING AND SPEECH	:	ECONOMIC IMPACT ANALYSIS
EXAMINING BOARD	:	(CLEARINGHOUSE RULE 12-)

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Hearing and Speech Examining Board relating to deceptive advertising, including how this proposed rule may affect businesses, local government units and individuals. The comments will be considered when the Department of Safety and Professional Services prepares the Economic Impact Analysis pursuant to § 227.137. Written comments may be submitted to:

Sharon Henes, Paralegal
Division of Board Services
Department of Safety and Professional Services
PO Box 8935
Madison, WI 53708-8935
Sharon.Henes@wisconsin.gov

The deadline for submitting economic impact comments is September 28, 2012.

PROPOSED ORDER

An order of the Hearing and Speech Examining Board to amend HAS 6.18(1)(d) and to create HAS 6.175(6) 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 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

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 analysis:

The department is currently soliciting comments in order to prepare the Economic Impact Analysis.

Anticipated costs incurred by private sector:

The department anticipates that the proposed rule will have no costs incurred by the private sector.

Fiscal estimate:

The department determined the proposed rule will have no fiscal impact.

Effect on small business:

These proposed rules will have no 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:

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

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)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Board Chairperson
Hearing and Speech Examining Board