



2021 ASSEMBLY BILL 14

January 25, 2021 - Introduced by JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES. Referred to Committee on State Affairs.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 457.03 (2); and *to create* 457.03 (2) (a) 1. to
2 4. and 457.03 (2) (b) of the statutes; **relating to:** rules defining unprofessional
3 conduct by marriage and family therapists, professional counselors, and social
4 workers.

Analysis by the Legislative Reference Bureau

This bill prohibits the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board from promulgating rules that establish certain forms of conduct by marriage and family therapists, professional counselors, and social workers (credential holders) as unprofessional conduct. Current law authorizes the examining board to promulgate rules governing the professional conduct of credential holders, and credential holders are subject to discipline for violating the examining board's rules.

Under the bill, the examining board may not promulgate a rule that does anything proposed by clearinghouse rule 19-166 or that establishes that any of the following constitutes unprofessional conduct by a credential holder: 1) discriminating on the basis of gender, gender identity, or ethnicity; 2) engaging in sexual conduct with a former client; 3) employing or promoting a treatment that attempts to change a person's sexual orientation or gender identity; and 4) failing to adequately supervise subordinates.

Proposed by the examining board, clearinghouse rule 19-166 established the following as constituting unprofessional conduct by a credential holder: 1) discriminating on the basis of gender, gender identity, or ethnicity; 2) failing to

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comply with child abuse reporting requirements; 3) engaging in sexual conduct with either a person taught, supervised, or instructed by the credential holder or with a former client; 4) taking unfair advantage of clients, students, supervisees, or professional relationships; 5) failing to notify the examining board of a conviction against the credential holder; 6) employing or promoting a treatment that attempts to change a person's sexual orientation or gender identity; 7) aiding or assisting an unlawful practice of marriage and family therapy, professional counseling, or social work; 8) failing to obtain a client's written, informed consent before recording the client; 9) failing to adequately supervise subordinates; 10) refusing to cooperate in a timely manner with the examining board's investigations; and 11) withholding documentation of clinical experience hours completed by a person the credential holder supervises.

The bill is introduced as required by s. 227.19 (5) (g), stats., in support of the objection of the Joint Committee for Review of Administrative Rules to promulgation of clearinghouse rule 19-166 by the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board. The proposed rule, as described above, made various changes to rules defining unprofessional conduct for marriage and family therapists, professional counselors, and social workers.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 457.03 (2) of the statutes is renumbered 457.03 (2) (a) (intro.) and
2 amended to read:

3 457.03 (2) (a) (intro.) Upon the advice of the social worker section, marriage
4 and family therapist section, and professional counselor section, promulgate rules
5 establishing a code of ethics to govern the professional conduct of certificate holders
6 and licensees. The rules shall specify the services included within the practice of
7 social work, advanced practice social work, or independent social work that an
8 individual who is certified under this chapter as a social worker, advanced practice
9 social worker, or independent social worker may perform and the degree of
10 supervision, if any, required to perform those services. The rules promulgated under
11 this paragraph may not do anything proposed by clearinghouse rule 19-166 as
12 submitted to the legislature under s. 227.19 on March 9, 2020. The rules

ASSEMBLY BILL 14**SECTION 1**

1 promulgated under this paragraph may not establish that any of the following
2 constitutes unprofessional conduct:

3 **SECTION 2.** 457.03 (2) (a) 1. to 4. of the statutes are created to read:

4 457.03 (2) (a) 1. Discriminating on the basis of gender, gender identity, or
5 ethnicity by means of service provided or denied.

6 2. Engaging in sexual contact, sexual conduct, or any other behavior that could
7 be construed as seductive, romantic, harassing, or exploitative, with a former client,
8 regardless of the amount of time that that has passed since the termination of
9 professional services.

10 3. Employing or promoting any intervention or method that has the purpose
11 of attempting to change a person's sexual orientation or gender identity, including
12 attempting to change behaviors or expressions of self or to reduce sexual or romantic
13 attractions or feelings toward individuals of the same gender.

14 4. Failing to adequately supervise subordinates.

15 **SECTION 3.** 457.03 (2) (b) of the statutes is created to read:

16 457.03 (2) (b) 1. The rules promulgated under par. (a) shall establish an amount
17 of time after contact with a client within which a credential holder shall prepare
18 clinical records.

19 2. Notwithstanding par. (a) 4., the examining board may promulgate a rule
20 establishing that a credential holder's failure to adequately supervise subordinates
21 constitutes unprofessional conduct, if the rule clearly specifies the degree of
22 supervision over subordinates that a credential holder is required to exercise.

23 (END)

Kristin Koger
Chairperson
Kathleen Miller
Vice Chairperson
Bridget Ellingboe
Secretary

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

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March 29, 2021

Senator Stephen Nass, Senate Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 10 South, State Capitol
Madison, WI 53702

Representative Adam Neylon, Assembly Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 125 West, State Capitol
Madison, WI 53702

RE: Report Submitted in Compliance with s. 227.29 (1), Stats.

Dear Senator Nass and Representative Neylon:

This report has been prepared and submitted in compliance with s. 227.29 (1), Stats.

I. Unauthorized rules, as defined in s. 227.26 (4) (a):

After careful review of the Board's administrative rules, the Board has determined that no promulgated rules are unauthorized.

II. Rules for which the authority to promulgate has been restricted:

III. Rules that are obsolete or that have been rendered unnecessary:

Rule	Description of why the rule is obsolete or has been rendered unnecessary	Action taken to address or reason for not taking an action
s. MPSW 1.02 (2h)	The entity described in this definition should be IC&RC, not ICRC.	The board will consider a scope statement to correct this issue at its April 21, 2021 meeting.
s. MPSW 19.03 (1) (a)	This provision currently does not include several entities that provide continuing education programs that the board would like to add as approved providers, and also contains duplicative entries.	The board will consider a scope statement to correct this issue at its April 21, 2021 meeting.

IV. Rules that are duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a ruling of a court of competent jurisdiction:

Rule	Citation or the text of the statute, regulation, or ruling	Action taken to address or reason for not taking an action
s. MPSW 1.04	The provision refers to only applications for certification. It should refer to both applications for certification and applications for licensure. The board issues both licenses (LCSW, MFT, LPC, ITs) and certificates (APSW, SWTC, CSW, CISW) under state law.	The board will consider a scope statement to correct this issue at its April 21, 2021 meeting.
s. MPSW 3.07 (3)	The training requirement for certification as an ISW does not match the statutory requirement in s. 457.08 (3) (c).	The board will consider a scope statement to correct this issue at its April 21, 2021 meeting.
s. MPSW 3.09 (3m)	The requirements enumerated in this provision for an individual to obtain credit for clinical hours completed outside of Wisconsin are inconsistent with the current clinical training hour requirements in MPSW 3.09 (3) for licensure as a clinical social worker.	The board will consider a scope statement to correct this issue at its April 21, 2021 meeting.

V. Rules that are economically burdensome:

After careful review of the Board’s administrative rules, the Board has determined that no promulgated rules are economically burdensome.

Thank you.

Cordially,

Kathleen Miller
Chairperson