

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Psychology Examining Board to amend Psy 2.01 (8), relating to discrimination based on arrest or conviction record.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 111.321, 111.322, 111.335 and 455.04 (1) (b), Stats.

Statutory authority: Section 15.08 (5) (b), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats.: 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.

Related statute or rule: None.

Plain language analysis:

2017 Wisconsin Act 278 enacted statutory changes to ch. 111, Stats., prohibiting a licensing agency from refusing to license an individual, or suspending a license, on the basis of a substantially related pending criminal charge, unless the charge is for one of certain specified crimes against a child or life and bodily security, or a violent crime against a child.

This rule project revises Psy 2 pertaining to applications in order to clarify that applicants are required to submit documentation of their conviction record, and are only required to submit documentation of a pending charge if it is substantially related to the practice and it involves a crime against a child or life and bodily security, or a violent crime against a child, as defined in s. 111.335, Stats.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

A preliminary hearing on scope for SS 006-19, revising Psy 2, was held at the July 24, 2019 meeting of the Psychology Examining Board. No comments were received.

Comparison with rules in adjacent states:

Illinois: Illinois law allows the Department of Financial Regulation, which regulates psychologists, to: "...refuse to issue, refuse to renew, suspend, or revoke any license, or may place on probation, reprimand, or take other disciplinary or non-disciplinary action deemed appropriate by the Department, including the imposition of fines not to exceed \$10,000 for each violation" where a licensee or applicant has been convicted of, or entered a nolo contendere or guilty plea, any felony under the laws of the United States or any state or territory thereof or that is a misdemeanor of which an essential element is dishonesty, or any crime that is directly related to the practice of the profession (225 ILCS 15/15 (1)).

Iowa: Iowa licensed psychologists may be disciplined, including revocation or suspension of a license, if they are convicted of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession, regardless of whether the judgment of conviction or sentence was deferred (645 IA Admin Code s. 242.2).

Michigan: A Michigan psychologist license can be denied, suspended, revoked, or limited if the psychologist exhibits a lack of good moral character, or has been convicted of the following (MCLS s. 333.16221):

“(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; conviction of a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or conviction of any felony other than a felony listed or described in another subparagraph of this subdivision. A certified copy of the court record is conclusive evidence of the conviction.

(vi) Lack of good moral character.

(vii) Conviction of a criminal offense under section 520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g. A certified copy of the court record is conclusive evidence of the conviction.

(viii) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.

(ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country. A certified copy of the record of the board is conclusive evidence of the final action.

(xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's or registrant's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.

(xii) Conviction of a violation of section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy of the court record is conclusive evidence of the conviction.

(xiii) Conviction of a criminal offense under section 83, 84, 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.84, 750.316, 750.317, 750.321, 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the court record is conclusive evidence of the conviction.

(xiv) Conviction of a violation of section 136 or 136a of the Michigan penal code, 1931 PA 328, MCL 750.136 and 750.136a. A certified copy of the court record is conclusive evidence of the conviction.”

Minnesota:

Under the Minnesota Psychology Board's rules of conduct, licensed psychologists must not violate any law in which the facts giving rise to the violation involve the practice of psychology. Violations of the rules of conduct can result in disciplinary action including denial of licensure. (Minn. Admin Rules s. 7200.4500 and 7200.5500).

Summary of factual data and analytical methodologies:

The Psychology Examining Board reviewed and seeks to revise its rules to bring them into compliance with the statutory changes enacted by 2017 Wisconsin Act 278.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule was posted for 14 days on the department's website to solicit input on possible economic impact. No comments were received.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0717; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received at or before the public hearing to be held at 9:00 a.m. on March 31, 2021, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Psy 2.01 (8) is amended to read:

Psy 2.01 (8) For applicants who have a pending criminal charge or have been convicted of a crime, subject to ss. 111.321, 111.322, and 111.335, Stats., all related information necessary for the board to determine whether the circumstances of the pending criminal charge or conviction are substantially related to the practice of psychology.

SECTION 2. EFFECTIVE DATE. 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.

(END OF TEXT OF RULE)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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| <p>1. Type of Estimate and Analysis <input type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p> | <p>2. Date November 28, 2019</p> |
| <p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Psy 2</p> | |
| <p>4. Subject Discrimination based on arrest or conviction record</p> | |
| <p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p> | <p>6. Chapter 20, Stats. Appropriations Affected</p> |
| <p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input 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 (if checked, complete Attachment A)</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</p> <p>2017 Wisconsin Act 278 enacted statutory changes to ch. 111, Stats., prohibiting a licensing agency from refusing to license an individual, or suspending a license, on the basis of a substantially related pending criminal charge, unless the charge is for one of certain specified crimes against a child or life and bodily security, or a violent crime against a child.</p> <p>This rule project revises Psy 2 pertaining to applications in order to clarify that applicants are required to submit documentation of their conviction record, and are only required to submit documentation of a pending charge if it is substantially related to the practice and it involves a crime against a child or life and bodily security, or a violent crime against a child, as defined in s. 111.335, Stats.</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.</p> <p>The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.</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)</p> <p>This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.</p> | |
| <p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</p> <p>The benefit of implementing the rule is that Psychology rules pertaining to discrimination based on arrest or conviction record in liscensing will be brought into compliance with staturuty requirements recently enacted by the state legislature.</p> | |

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The alternative to implementing the rule is that the psychology rules pertaining to discrimination based on arrest or conviction record will be out of compliance with state statute.

16. Long Range Implications of Implementing the Rule

The long range implications of implementing the rule is that Psychology rules pertaining to discrimination based on arrest or conviction record in licensing will be brought into compliance with statutory requirements recently enacted by the state legislature.

17. Compare With Approaches Being Used by Federal Government

The Federal Government does not regulate the licensing of psychologists.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Illinois law allows the Department of Financial Regulation, which regulates psychologists, to: "...refuse to issue, refuse to renew, suspend, or revoke any license, or may place on probation, reprimand, or take other disciplinary or non-disciplinary action deemed appropriate by the Department, including the imposition of fines not to exceed \$10,000 for each violation" where a licensee or applicant has been convicted of, or entered a nolo contendere or guilty plea, any felony under the laws of the United States or any state or territory thereof or that is a misdemeanor of which an essential element is dishonesty, or any crime that is directly related to the practice of the profession (225 ILCS 15/15 (1)).

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| 19. Contact Name Kevyn Radcliffe | 20. Contact Phone Number 608-266-0717 |
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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)

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

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:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

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

- Yes No
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