State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–1527/1
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2009 SENATE BILL 180

April 24, 2009 – Introduced by Senators ROBSON, LEHMAN, TAYLOR, WIRCH and HANSEN, cosponsored by Representatives PASCH, JORGENSEN, SOLETSKI, SMITH, GUNDERSON, GRIGSBY, GARTHWAITE, TOWNSEND, FRISKE and FIELDS, by request of ATTIC Correctional Services, ARC Community Services, Bethesda Lutheran Homes and Services, Community Alliance of Providers of Wisconsin, Easter Seals of Southeast Wisconsin, Rehabilitation for Wisconsin, Residential Services Association of Wisconsin, Ryan Community, Inc., Wisconsin Association of Alcohol and Other Drug Abuse, Wisconsin Assisted Living Association, Wisconsin Association of County Homes, Wisconsin Association of Homes and Services for the Aging, Wisconsin Council on Community Corrections, Wisconsin Counties Association, Wisconsin Early Autism Project, Wisconsin Health Care Association, Wisconsin Psychological Association. Referred to Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue.

AN ACT ***to renumber*** 455.02 (3m), 455.03 and 455.06; ***to amend*** 441.001 (3) (a), 441.001 (4) (b), 455.02 (title), 455.02 (2m) (title), 455.04 (title), 455.04 (5), 455.08, 455.09 (1) (intro.), 455.09 (1) (c), 455.09 (1) (d), 455.09 (3) and 961.01 (19) (a); and ***to create*** 440.03 (13) (b) 53m., 440.08 (2) (a) 60m., 441.001 (3m), 450.11 (8) (f), 455.01 (1g), 455.01 (1r), 455.01 (2g), 455.01 (2r), 455.01 (4m), 455.01 (5e), 455.01 (5m), 455.01 (5s), 455.02 (1r), 455.02 (2r), 455.02 (3m) (b), 455.03 (2), 455.04 (4m), 455.049, 455.06 (2), 455.07 (2m) and 455.09 (2m) of the statutes; **relating to:** granting prescriptive authority to psychologists and requiring the exercise of rule–making authority.

Analysis by the Legislative Reference Bureau

This bill authorizes the Psychology Examining Board in the Department of Regulation and Licensing to issue a certificate of prescriptive authority to a psychologist licensed by the examining board. "Prescriptive authority" is defined, generally, to mean authority to prescribe, distribute, and administer drugs to treat disorders identified within the practice of psychology. A person certified by the examining board may use the title, prescribing psychologist.

To qualify for certification under the bill, a psychologist must complete educational requirements and supervised practice established by the examining

board by rule and must pass an examination approved by the examining board by rule. A person certified under the bill must annually submit proof to the examining board of malpractice insurance coverage in an amount established by the examining board by rule.

The bill requires the examining board to promulgate rules governing the certification, supervision, and practice of prescribing psychologists. The bill also authorizes the examining board to make investigations and conduct hearings to determine whether a violation of the bill has occurred. The board may reprimand a prescribing psychologist or deny, limit, suspend, or revoke a certificate granted under the bill if a prescribing psychologist or applicant for certification has engaged in prohibited conduct.

Under current law, with certain exceptions, only persons registered under 21 U.S.C. 822 may lawfully possess controlled substances in the state. This bill requires applicants for certification to register under 21 U.S.C. 822.

Finally, the bill modifies the definitions of practical nursing and professional nursing under current law to include taking certain actions under the direction of a prescribing psychologist.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 440.03 (13) (b) 53m. of the statutes is created to read:

440.03 **(13)** (b) 53m. Prescribing psychologist.

SECTION 2. 440.08 (2) (a) 60m. of the statutes is created to read:

440.08 **(2)** (a) 60m. Prescribing psychologist: October 1 of each odd−numbered year.

SECTION 3. 441.001 (3) (a) of the statutes is amended to read:

441.001 **(3)** (a) "Practical nursing" means the performance for compensation of any simple acts in the care of convalescent, subacutely or chronically ill, injured or infirm persons, or of any act or procedure in the care of the more acutely ill, injured or infirm under the specific direction of a nurse, physician, podiatrist licensed under ch. 448, dentist licensed under ch. 447 ~~or~~, optometrist licensed under ch. 449, <u>or prescribing psychologist licensed and certified under ch. 455,</u> or under an order of a

person who is licensed to practice medicine, podiatry, dentistry ~~or,~~ optometry, or, if the person has prescriptive authority, psychology in another state if that person prepared the order after examining the patient in that other state and directs that the order be carried out in this state.

SECTION 4. 441.001 (3m) of the statutes is created to read:

441.001 **(3m)** PRESCRIPTIVE AUTHORITY. "Prescriptive authority" has the meaning given in s. 455.01 (5s).

SECTION 5. 441.001 (4) (b) of the statutes is amended to read:

441.001 **(4)** (b) The execution of procedures and techniques in the treatment of the sick under the general or special supervision or direction of a physician, podiatrist licensed under ch. 448, dentist licensed under ch. 447, ~~or~~ optometrist licensed under ch. 449, or prescribing psychologist licensed and certified under ch. 455, or under an order of a person who is licensed to practice medicine, podiatry, dentistry, ~~or~~ optometry, or, if the person has prescriptive authority, psychology in another state if the person making the order prepared the order after examining the patient in that other state and directs that the order be carried out in this state.

SECTION 6. 450.11 (8) (f) of the statutes is created to read:

450.11 **(8)** (f) The psychology examining board, insofar as this section applies to psychologists.

SECTION 7. 455.01 (1g) of the statutes is created to read:

455.01 **(1g)** "Administer" means the direct application of a prescribed drug, whether by injection, ingestion, or any other means, to the body of a patient by any of the following:

(a) A prescribing psychologist.

(b) A patient at the direction of a prescribing psychologist.

SECTION 8. 455.01 (1r) of the statutes is created to read:

455.01 **(1r)** "Dispense" has the meaning given in s. 450.01 (7).

SECTION 9. 455.01 (2g) of the statutes is created to read:

455.01 **(2g)** "Drug" has the meaning given in s. 450.01 (10) and includes all of the following:

(a) A drug, drug product, or drug−containing preparation that is subject to 21 USC 353 (b) or 21 CFR 201.105.

(b) A controlled substance under s. 961.01 (4).

SECTION 10. 455.01 (2r) of the statutes is created to read:

455.01 **(2r)** "Drug product" means a specific drug or drugs in a specific dosage form and strength from a known source of manufacture.

SECTION 11. 455.01 (4m) of the statutes is created to read:

455.01 **(4m)** "Patient" means a person who receives psychological services from a prescribing psychologist.

SECTION 12. 455.01 (5e) of the statutes is created to read:

455.01 **(5e)** "Prescribed drug" means any drug prescribed by a prescribing psychologist.

SECTION 13. 455.01 (5m) of the statutes is created to read:

455.01 **(5m)** "Prescribing psychologist" means a person certified by the examining board to exercise prescriptive authority.

SECTION 14. 455.01 (5s) of the statutes is created to read:

455.01 **(5s)** "Prescriptive authority" means authority to take any of the following actions on behalf of a particular patient of the individual exercising the authority:

(a) Prescribe, distribute, and administer drugs for the purpose of the treatment of disorders identified within the practice of psychology.

(b) Modify the schedule or dosage of, change, suspend, or discontinue a prescribed drug for the purpose of the treatment of disorders identified within the practice of psychology.

(c) Order and interpret laboratory tests for the purpose of the treatment of disorders identified within the practice of psychology.

SECTION 15. 455.02 (title) of the statutes is amended to read:

455.02 (title) **License required to practice; <u>certificate of prescriptive authority required to exercise prescriptive authority;</u> use of titles.**

SECTION 16. 455.02 (1r) of the statutes is created to read:

455.02 **(1r)** CERTIFICATE OF PRESCRIPTIVE AUTHORITY REQUIRED TO EXERCISE PRESCRIPTIVE AUTHORITY. No person may exercise prescriptive authority, or attempt to do so or make a representation as authorized to do so, unless the person holds a valid certificate of prescriptive authority issued by the examining board.

SECTION 17. 455.02 (2m) (title) of the statutes is amended to read:

455.02 **(2m)** (title) EXCEPTIONS <u>TO LICENSURE</u>.

SECTION 18. 455.02 (2r) of the statutes is created to read:

455.02 **(2r)** EXCEPTIONS TO CERTIFICATION. A certificate of prescriptive authority under this chapter is not required for a person lawfully practicing within the scope of a license, permit, registration, certificate, or certification granted by this state.

SECTION 19. 455.02 (3m) of the statutes is renumbered 455.02 (3m) (a).

SECTION 20. 455.02 (3m) (b) of the statutes is created to read:

455.02 **(3m)** (b) Only an individual licensed under s. 455.04 (1) and certified under s. 455.04 (4m) may use the title "prescribing psychologist" or any similar title.

SECTION 21. 455.03 of the statutes is renumbered 455.03 (1).

SECTION 22. 455.03 (2) of the statutes is created to read:

455.03 **(2)** A psychologist who is licensed or certified by a similar examining board of another state or territory of the United States or of a foreign country or province whose standards, in the opinion of the examining board, are equivalent to or higher than the requirements for certification as a prescribing psychologist under s. 455.04 (4m) may offer services as a prescribing psychologist in this state for not more than 60 working days in any year without holding a certificate of prescriptive authority issued under s. 455.04 (4m). The prescribing psychologist shall report to the examining board the nature and extent of his or her practice in this state if it exceeds 20 working days within a year.

SECTION 23. 455.04 (title) of the statutes is amended to read:

455.04 (title) **Licensure of psychologists and private practice school psychologists <u>and certification as a prescribing psychologist</u>.**

SECTION 24. 455.04 (4m) of the statutes is created to read:

455.04 **(4m)** The department shall issue a certificate of prescriptive authority to an individual who submits an application for the certificate to the department on a form provided by the department, pays the fee specified in s. 440.05 (1), and submits evidence satisfactory to the examining board that the individual satisfies all of the following:

(a) The individual holds a valid license issued under sub. (1).

(b) The individual has completed educational requirements established by the examining board by rule.

(c) The individual has completed supervised practice for a period of time and consistent with requirements established by the examining board by rule.

(d) The individual passed an examination approved by the examining board by rule.

(e) The individual demonstrates compliance with 21 U.S.C. 822.

SECTION 25. 455.04 (5) of the statutes is amended to read:

455.04 **(5)** Applicants for licensure under subs. (1) and (4) and for certification under sub. (4m) may be required to appear before the examining board in person prior to licensure and certification to allow the examining board to make such inquiry of them as to qualifications and other matters as it considers proper.

SECTION 26. 455.049 of the statutes is created to read:

455.049 Malpractice insurance coverage. (1) The examining board shall promulgate rules establishing the minimum amount of malpractice liability insurance that a prescribing psychologist shall have if he or she holds a certificate of prescriptive authority.

(2) Every prescribing psychologist who is certified under s. 455.04 (4m) shall annually submit to the examining board evidence satisfactory to the examining board that he or she has in effect malpractice liability insurance coverage in the minimum amounts required by the rules under sub. (1).

SECTION 27. 455.06 of the statutes, as affected by 2007 Wisconsin Act 20, is renumbered 455.06 (1).

SECTION 28. 455.06 (2) of the statutes is created to read:

455.06 **(2)** The renewal date for certificates issued under s. 455.04 (4m) is specified under s. 440.08 (2) (a), and the renewal fee for such licenses is determined by the department under s. 440.03 (9) (a).

SECTION 29. 455.07 (2m) of the statutes is created to read:

455.07 **(2m)** The fee for renewal of a certificate of prescriptive authority under this chapter is determined by the department under s. 440.03 (9) (a).

SECTION 30. 455.08 of the statutes is amended to read:

455.08 Rules and code of ethics. The examining board shall adopt such rules as are necessary under this chapter ~~and~~, which rules shall include educational requirements for and standards governing the certification, supervision, and practice of prescribing psychologists. The examining board shall, by rule, establish a reasonable code of ethics governing the professional conduct of psychologists, using as its model the "Ethical Standards of Psychologists~~",~~," established by the American Psychological Association. The primary intent of this code shall be to assure that licensed psychologists limit their practices to those specialties in the field of psychology which they are qualified to practice. Every person who holds a license to practice psychology in this state shall be governed and controlled by such code of ethics. A written statement of the code shall be made available to all applicants for licensing, as well as all licensed psychologists, when amendments are made to those standards. Nothing in this chapter shall be construed to authorize the psychologist to engage in the practice of medicine.

SECTION 31. 455.09 (1) (intro.) of the statutes is amended to read:

455.09 **(1)** (intro.) Subject to the rules promulgated under s. 440.03 (1), the examining board may deny an application for a license or for a certificate of prescriptive authority, or may by order suspend for a period not exceeding one year, limit, revoke, or impose probationary conditions upon a license or a certificate of prescriptive authority, or may reprimand a licensee or certificate holder if the applicant or licensee, or certificate holder:

SECTION 32. 455.09 (1) (c) of the statutes is amended to read:

455.09 **(1)** (c) Impersonates another person holding a license or a certificate of prescriptive authority under this chapter or allows another person to use his or her license or certificate of prescriptive authority.

SECTION 33. 455.09 (1) (d) of the statutes is amended to read:

455.09 **(1)** (d) Uses fraud or deception in applying for a license or a certificate of prescriptive authority under this chapter.

SECTION 34. 455.09 (2m) of the statutes is created to read:

455.09 **(2m)** A suspended certificate of prescriptive authority is subject to the requirements for renewal of the certificate under s. 440.08. The renewal of a suspended certificate does not entitle the certificate holder to any rights, privileges or authority conferred by the certificate while the certificate remains suspended.

SECTION 35. 455.09 (3) of the statutes is amended to read:

455.09 **(3)** ~~A~~ Neither a revoked license nor a revoked certificate of prescriptive authority may ~~not~~ be renewed. One year from the date of revocation of a license or a certificate of prescriptive authority under this chapter, application may be made for reinstatement. The examining board may accept or reject an application for reinstatement. If reinstatement is granted under this subsection, the licensee or the holder of a certificate of prescriptive authority shall pay a reinstatement fee in an amount equal to the renewal fee. This subsection does not apply to a license that is revoked under s. 440.12.

SECTION 36. 961.01 (19) (a) of the statutes is amended to read:

961.01 **(19)** (a) A physician, advanced practice nurse, dentist, veterinarian, podiatrist, optometrist, prescribing psychologist, scientific investigator or, subject to s. 448.21 (3), a physician assistant, or other person licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to,

administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

SECTION 37. Nonstatutory provisions.

(1) RULE MAKING.

(a) The psychology examining board shall submit in proposed form the rules required under section 455.049 (1) of the statutes, as created by this act, and section 455.08 of the statutes, as affected by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 9th month beginning after the effective date of this paragraph.

(b) Using the procedure under section 227.24 of the statutes, the psychology examining board may promulgate rules required under section 455.049 (1) of the statutes, as created by this act, and section 455.08 of the statutes, as affected by this act, for the period before the effective date of the rules submitted under paragraph (a), but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the psychology examining board is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

SECTION 38. Effective dates. This act takes effect on the first day of the 9th month beginning after publication, except as follows:

(1) The treatment of SECTION 37 (1) of this act takes effect on the day after publication.

(END)