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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

**STATE OF WISCONSIN
MEDICAL EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 09-005)**

TO: Senator Jim Holperin, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 409 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the MEDICAL EXAMINING BOARD is submitting in final draft form rules relating to temporary certificates for respiratory care practitioners who are certified in other states.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

Thank you.

**STATE OF WISCONSIN
MEDICAL EXAMINING BOARD**

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : **REPORT TO THE LEGISLATURE**
MEDICAL EXAMINING BOARD : **ON CLEARINGHOUSE RULE 09-005**
: **(s. 227.19 (3), Stats.)**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

Application forms are available from the department. A Note has been created in s. Med 20.055.

III. FISCAL ESTIMATES:

The Department of Regulation and Licensing estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, and the Division of Professional Credentialing. The total one-time salary and fringe costs are estimated at \$3,500. The total on-going salary and fringe costs are estimated at \$600. Initially, the department stated there was no fiscal effect because it was assumed the minimal costs associated with processing the new temporary credential could be easily absorbed by the department. However, it is now the policy of the department to reflect actual costs, even if minimal, so that the impact of additional regulatory duties on the department's budget is recognized. The department finds that this rule has no significant fiscal effect on the private sector.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

This proposed rule-making will conform ch. Med 20, relating to respiratory care practitioners, to the provisions enacted by 2007 Wisconsin Act 54, which created a temporary certificate for the practice of respiratory care. The temporary certificate to practice respiratory care authorized by this Act is available to a limited category of applicants who have passed the national examination and are licensed in another state. The proposed rule addresses the high demand for health care professionals such as respiratory care practitioners and will make it easier for hospitals, especially those along Wisconsin's borders, to recruit and hire qualified applicants who are licensed in neighboring states in a timely manner. Currently, the temporary certificate is only available to graduates who have not passed the national examination.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on March 18, 2009. There were no appearances at the public hearing and no written comments were received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Med 20 CR09-005 (Respiratory care temporary certificates) Report to Leg 4-22-09

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 09-005)

PROPOSED ORDER

An order of the Medical Examining Board to amend Med 20.05 (title); and to create Med 20.055, relating to temporary certificates for respiratory care practitioners who are certified in other states.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 448.04 (1) (i) 2. and 3., Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats.

Explanation of agency authority:

The Medical Examining Board has the authority under s. 448.40, Stats., to promulgate rules for the issuance of temporary certificates for respiratory care practitioners.

Related statute or rule:

Section 448.04 (1) (i), Stats., and s. Med 20.05.

Plain language analysis:

This proposed rule-making will conform ch. Med 20, relating to respiratory care practitioners, to the provisions enacted by 2007 Wisconsin Act 54, which created a temporary certificate for the practice of respiratory care. The temporary certificate to practice respiratory care authorized by this Act is available to a limited category of applicants who have passed the national examination and are licensed in another state. The Act allows for a maximum of three months of practice under the temporary certificate, which cannot be renewed. The proposed rule addresses the high demand for health care professionals such as respiratory care practitioners and will make it easier for hospitals, especially those along Wisconsin's borders, to recruit and hire qualified

applicants who are licensed in neighboring states in a timely manner. Currently, the temporary certificate is only available to graduates who have not passed the national examination.

SECTION 1 amends the title to s. Med 20.05.

SECTION 2 creates s. Med 20.055 relating to the requirements for issuance of a temporary certificate for applicants who are certified to practice in another state.

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

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Iowa:

None.

Illinois:

There is a six month temporary license available for pending applicants until the next available examination is taken.

Michigan:

A temporary license is available for up to four years if the applicant has practiced as a full-time respiratory care practitioner for four years immediately preceding the date of application in certain, specified settings. A letter of recommendation from a Medical Director is also required.

Minnesota:

A temporary permit is issued and is valid until the board meets to decide on the application. A temporary permit is also available until the next available examination.

Summary of factual data and analytical methodologies:

The proposed rules will conform a respiratory care practitioners rule to recent statutory changes brought about by 2007 Wisconsin Act 54, which created s. 448.04 (1) (i) 3., Stats.

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

The Medical Examining Board did not consult supporting documents other than 2007 Wisconsin Act 54. It is merely updating its rules based on the legislative change.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council.

The Department of Regulation and Licensing is not included as an “agency” in this section.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, and the Division of Professional Credentialing. The total one-time salary and fringe costs are estimated at \$3,500. The total on-going salary and fringe costs are estimated at \$600. Initially, the department stated there would be no fiscal effect because it was assumed the minimal costs associated with processing the new temporary credential could be easily absorbed by the department. However, it is now the policy of the department to reflect actual costs, even if minimal, so that the impact of additional regulatory duties on the department’s budget is recognized.

Effect on small business:

These proposed rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at hector.colon@wisconsin.gov, or by calling 608-266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at pamela.haack@wisconsin.gov.

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

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to pamela.haack@wisconsin.gov. Comments must be received on or before February 20, 2009, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med 20.05 (title) is amended to read:

Med 20.05 (title) Temporary certificates for graduate respiratory care practitioners.

SECTION 2. Med 20.055 is created to read:

Med 20.055 Temporary certificates for certified practitioners. (1) An applicant for certification who is certified to practice respiratory care in another state may apply to the board for a temporary certificate to practice respiratory care if the applicant submits all of the following:

- (a) A completed application form.
 - (b) The fee specified in s. 440.05 (1) (a), Stats.
 - (c) Written verification that the applicant has passed the national board for respiratory care certified therapy technician examination.
 - (d) Evidence satisfactory to the board that the applicant meets the requirements of s. 448.05 (5r), Stats.
 - (e) Evidence satisfactory to the board that the applicant is certified to practice respiratory care in another state.
- (2) If an applicant for a temporary certificate has been subjected to professional discipline as a result of the applicant's practice of respiratory care in another state, the applicant shall submit to the board a description of the circumstances of the discipline and a copy of the disciplinary order.
- (3) The board may not issue a temporary certificate to an individual who has been previously issued a temporary certificate under this section.
- (4) A temporary certificate under this section may be issued for a period not to exceed 3 months and may not be renewed.

Note: Application forms are available from the Department of Regulation and Licensing, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin, 53708, or from the department's website at <http://drl.wi.gov>.

(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 _____

Chairperson
Medical Examining Board

Med 20 CR09-005 (Respiratory care temporary certificates) Draft to Leg 4-22-09



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 09-005

AN ORDER to amend Med 20.05 (title); and to create Med 20.055, relating to temporary certificates for respiratory care practitioners who are certified in other jurisdictions.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

01-22-2009 RECEIVED BY LEGISLATIVE COUNCIL.

02-03-2009 REPORT SENT TO AGENCY.

RS:MS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-005

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. In the “Statutes interpreted” section of the rule preface, the reference to s. 448.40 (1), Stats., is improper. This statute gives the Medical Examining Board authority to promulgate rules and should be referenced under the “Statutory authority” section.

b. The “Statutes interpreted” section of the rule preface should also refer to s. 448.04 (1) (i) 3., Stats.

4. Adequacy of References to Related Statutes, Rules and Forms

The statute referenced in s. Med 20.055 (1) (b) should be clearer and match what is listed in the statutes. While the reference to “s. 440.05, Stats.,” is consistent with s. Med 20.05 (1) (b), the reference should be stated as “s. 440.05 (1) (a), Stats.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. There is a typographical error in the last line of page 1, under the “Plain language analysis” section of the rule preface. The phrase “makes its easier” should be replaced with “make it easier.”

b. A prescription drug labeling act, 2005 Wisconsin Act 195, is referenced in the rule preface section titled “Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.” It is unclear why this Act would have any

relationship to an administrative rule regarding certified respiratory care certification. Is this reference correct? If not, this reference should be removed.

c. The "Fiscal estimate" states that there will be a total one-time salary and fringe cost estimate of \$3,500 and a total ongoing salary and fringe cost of \$600. The fiscal estimate prepared by the Department of Regulation and Licensing for 2007 Assembly Bill 413, creating s. 448.04 (1) (i) 3., stated that there would be no state fiscal effect. The major assumptions that led to this calculation should be provided. [See s. 1.02 (7) (a) 3., Manual.]

d. Section Med 20.055 (1) and (2) refer to an applicant certified in "another jurisdiction." The statutes, however, refer to an applicant certified in "another state." [See s. 448.04 (1) (i) 3., Stats.] The term "jurisdiction" may have a different meaning than "state." The language should be consistent with the statute. [See s. Med 20.056 (1) (e).]

e. Section Med 20.055 (1) (a) refers to an application form. A reference to how this form may be found, as done in the notes section of s. Med 20.03, should be included. [See s. 1.08 (2), Manual.]

f. In s. Med 20.055 (1) (c), the entity "National Board for Respiratory Care Certified Therapy Technician" should not be capitalized. [See s. 1.01 (4), Manual.]