phar004_EmR0903.pdf **Pharmacy Examining Board – Revises Ch. Phar 4 – EmR0903**

Publication Date: **February 28, 2009**
Effective: **February 28, 2009 through July 27, 2009**
Hearing Dates: **April 8, 2009**

STATE OF WISCONSIN PHARMACY EXAMINING BOARD
An order of the Pharmacy Examining Board to repeal s. Phar 4.02 (2), relating to the practical examination.

Analysis prepared by the Department of Regulation and Licensing.
Statutes interpreted:
Sections 450.04 and 450.05, Stats.

Statutory authority:
Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (d), Stats.

Explanation of agency authority:
The board is authorized under s. 450.02 (3) (d), Stats., to promulgate rules necessary for the administration of ch. 450, Stats., which includes approving examinations to determine whether an applicant is competent to engage in the practice of pharmacy. Refer also to s. 450.04 (1), Stats.

Related statute or rule:
Ch. Phar 4 sets forth the board's procedures for administering, scoring, handling claims of examination error and responding to requests to retake the examination.

Plain language analysis:
SECTION 1. In this emergency rule, the board repeals s. Phar 4.02 (2), which relates to the practical examination required for licensure of pharmacists. Under the current rule, the board administers a practical examination to determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients. The board has determined that this examination is no longer needed because the competencies tested in the examination are also tested in two other national examinations that applicants are required to take in order to obtain a license in Wisconsin.

Summary of, and comparison with, existing or proposed federal regulation:
Federal Medicaid law requires a patient consultation on new prescriptions.

Comparison with rules in adjacent states:
Iowa: Iowa does not have a separate patient consultation examination requirement.
Illinois: Illinois does not have a separate patient consultation examination requirement.
Michigan: Michigan does not have a separate patient consultation examination requirement.
Minnesota: Minnesota does not have a separate patient consultation examination requirement.

Summary of factual data and analytical methodologies:
It was the board's custom over time to review examination performance at each full board meeting for the examination that occurred the day before its meetings. As a result of apparent trends that emerged from these post-examination reviews, the board undertook an analysis of aggregate examination pass rates as it discussed the ongoing need for a practical consultation examination and found rates to be significantly higher for graduates of the University of Wisconsin-Madison than for other pharmacy schools. The board also reviewed experience in other states and found that Wisconsin is one of only four states in the nation that continues to require a practical consultation examination. One of the implications suggested by the board as a result of its review is that the examination creates a barrier to licensure in Wisconsin, and that the benefits of the examination do not justify its costs.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:
It is anticipated that elimination of the examination will have a positive impact on small business by yielding an enlarged pool of licensed pharmacists available for hire.

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 the proposed rule will have no significant fiscal impact.

Effect on small business:
These rules will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats.

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 April 13, 2009, to be included in the record of rule-making proceedings.

FINDING OF EMERGENCY

The Pharmacy Examining Board finds that, under s. 227.24 (1), Stats., the repeal of s. Phar 4.02 (2) is required for the preservation of the public peace, health, safety and welfare.

Currently, under s. Phar 4.02 (2), the board administers a practical examination to determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients. The board has determined that this examination is no longer needed because the competencies tested in the examination are also tested in two other national examinations that applicants are required to take in order to obtain a license in Wisconsin. The board has also determined that the practical examination requirement may contribute to the shortage of pharmacists in Wisconsin.

First, under s. Phar 4.02 (1) and (3), an applicant is required to take and pass the Multi-State Pharmacy Jurisprudence Examination (MPJE) and the North American Pharmacist Licensure Examination (NAPLEX). Both of these examinations test competencies that relate to subject areas that are also tested in the practical examination. As a result, applicants are required to take an additional examination, and pay an additional examination fee. In some instances, this step may also result in a delay in the processing of applications for licensure.

Second, in reference to the shortage of pharmacists in Wisconsin, the board has found that populations in rural areas and in certain city neighborhoods are underserved. The board believes that, because of its practical examination requirement, potential applicants from other states are declining to seek licensure in Wisconsin. Wisconsin is one of only four states that require a practical examination. None of the states that border Wisconsin have a practical examination requirement.

TEXT OF RULE
SECTION 1. Phar 4.02 (2) is repealed.

This emergency rule shall take effect on February 28, 2009.