

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 18-074)

PROPOSED ORDER

An order of the Medical Examining Board to **repeal** Med 22.03 (3) (intro.), (a), and (b) 3., 22.04 (1) and (2), 22.05 (1) (d) and (f), and 22.08 (Note); to **renumber** Med 22.03 (3) (b) 1.; to **renumber and amend** Med 22.03 (3) (b) 2. and 22.07 (6); to **amend** Med 22.01, 22.02 (intro.), (3), and (4), 22.03 (intro.), (1), and (Note), 22.04 (3), (4), (5), (6), (9), and (10), 22.05 (1) (intro.), (a), (b), (c), and (e), (2), and (3) (a), 22.06 (1), (2) (intro.), (a), (d), and (e), (3), and (5), 22.07 (1) to (5), (7), and (8), 22.08 (2), 22.09 (4), and 22.10 (2), (3), (4) (a) to (c), and (5); and to **create** Med 22.04 (5) (k), 22.05 (1m), 22.07 (5m) and (6) (a) to (d), and 22.10 (1) (title) and (am) and (4) (title), relating to perfusionists.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 440.03 (4m), Stats.

Statutory authority:

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

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides an examining board “shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 448.40 (2) (c), Stats., requires the Medical Examining Board to promulgate rules “[e]stablishing continuing education requirements for renewal of a license to practice perfusion under s. 448.13 (2).”

Related statute or rule:

None.

Plain language analysis:

A comprehensive review of ch. Med 22 was conducted to ensure the rules are consistent with current standards for drafting style and format and applicable Wisconsin statutes. As a result, the following updates have been made:

- Sections Med 20.03 and 22.04 are revised to remove requirements for applications submitted prior to January 1, 2004.

- Revisions to s. Med 22.04 (3), (4), and (6) are made to, as required under s. 448.05 (6) (a), Stats., specify the passing score for the Perfusion Basic Science Examination, the Clinical Applications in Perfusion Examination, the statutes and rules examination, and the oral examination.
- Section Med 22.04 (9) is revised to clarify the requirement to complete further professional training or education before retaking an exam after a third failure does not apply to the Perfusion Basic Science Examination or the Clinical Applications in Perfusion Examination.
- Section Med 22.07 (5m) is created to void the application of an applicant who uses a recording device when reviewing an examination, and requires the applicant to reapply for licensure. A provision is created under s. Med 22.04 (5) that will allow the Board to require an applicant who has violated s. Med 22.07 (5m) to complete an oral examination.
- Section Med 22.10 (5) is revised to comply with s. 440.03 (4m), Stats., as created by 2017 Wisconsin Act 59. Under this provision, the Board may require a credential holder to submit proof of completing continuing education programs or courses only if a complaint is made against the credential holder.
- Other provisions throughout ch. Med 22 have been updated to provide clarity and conform to current standards for drafting style and format.

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

None.

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation address the practice of perfusion in Illinois (68 Ill. Adm. Code 1335.10 to 1335.100). Although underlying statutes authorize the Department to establish rules requiring 30 hours of continuing education per 2-year license renewal cycle (225 ILCS 125/75 – Perfusionist Practice Act), the rules currently do not have such a requirement.

Iowa:

Iowa rules and statutes do not specifically address the practice of perfusion.

Michigan:

Michigan rules and statutes do not specifically address the practice of perfusion.

Minnesota:

Minnesota rules and statutes do not specifically address the practice of perfusion.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of ch. Med 22 for consistency with current standards for drafting style and format and applicable Wisconsin statutes and obtaining input and feedback from the Medical Examining Board.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis document 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:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 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 8:00 a.m. on December 19, 2018, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med 22.01 is amended to read:

Med 22.01 Authority and purpose. The rules in this chapter are adopted by the medical examining board under the authority of ss. 15.08 (5) (b)₂, ~~and 227.11 (2), Stats., and ss. 448.02, 448.04, 448.05, 448.13₂ and 448.40, Stats.~~

SECTION 2. Med 22.02 (intro.), (3), and (4) are amended to read:

Med 22.02 (intro.) Definitions. ~~As used in~~ In this chapter:

(3) “Perfusion” has the meaning ~~set forth~~ given in s. 448.015 (1m), Stats.

(4) “Perfusionist” has the meaning ~~set forth~~ given in s. 448.015 (1s), Stats.

SECTION 3. Med 22.03 (intro.) and (1) are amended to read:

Med 22.03 (intro.) Applications and credentials. Every applicant for initial licensure as a perfusionist shall submit all of the following:

(1) A completed application on a form provided by the board.

SECTION 4. Med 22.03 (3) (intro.) and (a) are repealed.

SECTION 5. Med 22.03 (3) (b) 1. is renumbered Med 22.03 (3).

SECTION 6. Med 22.03 (3) (b) 2. is renumbered Med 22.03 (4) and amended to read:

Med 22.03 (4) ~~Written verification that Evidence~~ the applicant has passed both the perfusion basic science examination and the clinical application in perfusion examination of the American Board of Cardiovascular Perfusion the examinations required under s. Med 22.04.

SECTION 7. Med 22.03 (3) (b) 3. is repealed.

SECTION 8. Med 22.03 (Note) is amended to read:

Med 22.03 (Note) Application forms are available ~~on request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708~~ from the department of safety and professional services at (608) 266-2112 or from the department's website at www.dsps.wi.gov.

SECTION 9. Med 22.04 (1) and (2) are repealed.

SECTION 10. Med 22.04 (3), (4), and (5) are amended to read:

Med 22.04 (3) An applicant for licensure as a perfusionist ~~under s. Med 22.03 (3) (b)~~, shall pass both the ~~perfusion basic science examination~~ Perfusion Basic Science Examination and the ~~clinical application in perfusion examination~~ Clinical Applications in Perfusion Examination of the American Board of Cardiovascular Perfusion. The board adopts the passing scores of the examination provider.

(4) An applicant for licensure as a perfusionist ~~under s. Med 22.03 (3) (b)~~, shall pass a state board statutes and rules examination conducted by the council ~~as evidenced by documents submitted directly to the council by the department's office of examinations.~~ The passing score for the examination under this subsection is 85 percent.

(5) **(intro.)** ~~An applicant who meets the criteria under s. Med 22.03 (3) (b),~~ The council may be required require an applicant to complete an oral examination if the applicant any of the following circumstances apply:

(a) ~~Has~~ The applicant has a medical condition which impairs or limits the applicant's ability to practice perfusion with reasonable skill and safety.

(b) ~~Uses~~ The applicant uses chemical substances so as to impair the applicant's ability to practice perfusion with reasonable skill and safety.

(c) ~~Has~~ The applicant has been disciplined or had licensure denied by a licensing or regulatory authority in ~~Wisconsin~~ this state or another jurisdiction.

(d) ~~Has~~ The applicant has been convicted of a crime the circumstances of which substantially relate to the practice of perfusion.

(e) ~~Has not~~ The applicant has practiced perfusion for ~~more than~~ more than 1,200 hours or less during the 3-year period preceding the date of application.

(f) ~~Has~~ The applicant has practiced ~~over~~ perfusion for more than 1,200 hours ~~in~~ during the last 3 years 3-year period preceding the date of application, but practice was limited.

(g) ~~Has~~ The applicant has been found negligent in the practice of perfusion or has been a party in a lawsuit in which it was alleged that the applicant has been negligent in the practice of perfusion.

(h) ~~Has~~ The applicant has been diagnosed as suffering from pedophilia, exhibitionism, or voyeurism.

(i) ~~Has~~ The applicant has, within the past 2 years, engaged in the illegal use of controlled substances.

(j) ~~Has~~ The applicant has been subject to adverse formal action during the course of perfusion education, postgraduate training, hospital practice, or other perfusion employment.

SECTION 11. Med 22.04 (5) (k) is created to read:

Med 22.04 (5) (k) The applicant has violated s. Med 22.07 (5m).

SECTION 12. Med 22.04 (6), (9), and (10) are amended to read:

Med 22.04 (6) The council shall conduct oral examinations ~~and interviews~~. At the request of the council, the board shall provide a medical consultant to ~~the council to provide assistance~~ assist in evaluating applicants examined under s. ~~Med 22.03 (3) sub. (5) (a) and or (b)~~. The passing score for an oral examination is 75 percent.

(9) An applicant who fails to receive a passing grade on an examination under sub. (4) or (5) may reapply by payment of the fee specified in s. 440.05, Stats. If an applicant fails ~~an~~ the examination under sub. (4) 3 times, the applicant may not retake ~~that~~ the examination unless the applicant submits ~~proof~~ evidence of having completed further professional training or education as the board may prescribe. An applicant ~~for an oral examination~~ may reapply for an oral examination twice at not less than ~~4 month~~ 4-month intervals.

(10) ~~If after receipt of additional information from applicants who have been treated for alcohol or drug abuse or impairment or from applicants who have been treated for an acute or chronic psychological impairment the council decides that an oral interview or examination shall be administered, the~~ An oral examination concerning the circumstances described in sub. (5) (a) or (b) shall be limited to a determination whether, at the time of application, ~~the applicant's disability appears to pose an actual risk to the health, safety, or welfare of patient or public arising~~ arises from the applicant's demonstrated inability to safely carry out necessary duties and responsibilities inherent to the practice of perfusion.

SECTION 13. Med 22.05 (1) (intro.), (a), (b), and (c) are amended to read:

Med 22.05 (1) (intro.) An applicant for licensure ~~who meets the criteria under s. Med 22.03 (3) (b)~~ may apply to the board for a temporary license to practice perfusion prior to licensure if the applicant ~~does~~ submits all of the following:

(a) ~~Submits a~~ A completed application on a form provided by the board.

(b) ~~Remits the~~ The fee specified in s. 440.05, Stats.

(c) ~~Has~~ Evidence the applicant has successfully completed an educational program as ~~defined in~~ under s. Med 22.03 (3) ~~(b)1~~.

SECTION 14. Med 22.05 (1) (d) is repealed.

SECTION 15. Med 22.05 (1) (e) is amended to read:

Med 22.05 (1) (e) ~~Has~~ Evidence the applicant has passed the state board statutes and rules examination under s. Med 22.04 (4).

SECTION 16. Med 22.05 (1) (f) is repealed.

SECTION 17. Med 22.05 (1m) is created to read:

Med 22.05 (1m) The board may not issue a license under this section if any of the following applies:

(a) The applicant has failed either of the examinations under s. Med 22.04 (3) and has not subsequently passed the examination.

(b) The applicant is required to complete an oral examination.

SECTION 18. Med 22.05 (2) and (3) (a) are amended to read:

Med 22.05 (2) ~~Practice~~ Except as provided under sub. (3) (b), practice during the period of a temporary license shall be under the general supervision of a licensed perfusionist. A person holding a temporary license shall consult at least weekly with the supervising perfusionist who shall at least once a month endorse the activities of the person holding the temporary license.

(3) (a) A temporary license expires one year from the date of its issuance. Upon application, and upon submission of evidence of having passed the perfusion basic scientific examination, the temporary license may be renewed for an additional period of one year. The board may extend the term of the temporary license for an additional 6 months if the applicant was unable to complete the perfusion basic scientific examination within the ~~one-year~~ one-year period due to hardship, including ~~but not limited to~~ illness of the applicant, ~~the~~ illness or death of a family member of the applicant, or an accident or natural disaster. A written affidavit of the hardship ~~must~~ shall be provided.

SECTION 19. Med 22.06 (1), (2) (intro.), (a), (d), and (e), (3), and (5) are amended to read:

(1) An applicant who holds certification in clinical perfusion granted by the American Board of Cardiovascular Perfusion may apply to the board for a temporary locum tenens license.

(2) (intro.) An applicant for a locum tenens license shall submit ~~to the board~~ all of the following:

(a) A completed ~~and verified~~ application on a form supplied provided by the board.

(d) A verified statement by the applicant that the applicant is familiar with the state health laws of this state and ~~the~~ rules of the department of health services as related to communicable diseases.

(e) The fees required under s. 440.05, Stats., ~~made payable to the Wisconsin department of safety and professional services.~~

(3) All applicants shall ~~complete an open book~~ pass the examination on statutes and rules governing the practice of perfusion in Wisconsin under s. Med 22.04 (4).

(5) A locum tenens license expires 90 days from the date of its issuance. For cause shown to the satisfaction of the board, the board may renew the locum tenens license for additional periods of 90 days each, but ~~no~~ a license may not be renewed more than 3 consecutive times.

SECTION 20. Med 22.07 (1) to (5) are amended to read:

Med 22.07 (1) An applicant who fails the oral or statutes and rules examination may make a request to review that examination by filing a written request and required fee with the board within 30 days of the date on which examination results were ~~mailed~~ received by the applicant.

(2) Examination reviews ~~are~~ shall be by appointment only.

(3) An applicant may not review the statutes and rules examination for ~~not~~ more than one hour.

(4) An applicant may not review the oral examination for ~~not~~ more than 2 hours.

(5) An applicant shall review an examination in the presence of a board-assigned proctor. The applicant No other person may not be accompanied accompany an applicant during the a review by any person other than the proctor.

SECTION 21. Med 22.07 (5m) is created to read:

Med 22.07 (5m) (a) An applicant may not use any device capable of recording audio, photographic, or video content, or capable of viewing or playing back such content, during a review. A violation of this subsection shall void the applicant's application and require the applicant to reapply for licensure.

(b) A violation of this subsection constitutes knowingly engaging in fraud, misrepresentation, or dishonesty in applying for or procuring a license.

SECTION 22. Med 22.07 (6) is renumbered Med 22.07 (6) (intro.) and amended to read:

Med 22.07 (6) (intro.) At the beginning of ~~the a~~ a review, the ~~applicant~~ proctor shall ~~be provided~~ provide the applicant with a copy of the questions, a copy of the applicant's answer sheet or oral examination audiotape and a copy of the master answer sheet. all of the following:

SECTION 23. Med 22.07 (6) (a) to (d) are created to read:

Med 22.07 (6) (a) A copy of the examination questions.

(b) A copy of or, if the applicant is reviewing an oral examination, audio recording of the applicant's answers to the examination questions.

(c) If an applicant is reviewing the statutes and rules examination, a copy of the master answer sheet.

(d) A form on which the applicant may write comments, questions, or claims of error regarding the examination.

SECTION 24. Med 22.07 (7) and (8) are amended to read:

Med 22.07 (7) ~~The applicant may review the examination in the presence of a proctor. The applicant shall be provided with a form on which to write comments, questions, or claims of error regarding any item in the examination. The An applicant may consult bound reference books materials during the a review. Applicants shall not remove any notes from the area. Notes~~ The form under sub. (6) (d) and any other notes taken by an applicant during a review shall be retained by the proctor and, if requested by the applicant, made available to the applicant for use at a hearing, if requested. The A proctor shall may not defend the examination or attempt to refute claims of error during the a review.

(8) An applicant may not review ~~the an~~ examination more than once.

SECTION 25. Med 22.08 (2) is amended to read:

Med 22.08 (2) The board shall review the claim, make a determination of the validity of the objections, and notify the applicant in writing of the board's decision and any resulting ~~grade~~ changes to the applicant's exam score.

SECTION 26. Med 22.08 (Note) is repealed.

SECTION 27. Med 22.09 (4) is amended to read:

Med 22.09 (4) The performance and use of anticoagulation monitoring and analysis, physiologic monitoring and analysis, blood gas and chemistry monitoring and analysis, hematologic monitoring and analysis, induction and hypothermia and ~~hyperthermia~~ hyperthermia with reversal, hemoconcentration and hemodilution, and ~~hymodialysis~~ hemodialysis.

SECTION 28. Med 22.10 (1) (title) and (am) are created to read:

Med 22.10 (1) (title) DEFINITIONS.

(am) "AC-PE" means the Accreditation Committee-Perfusion Education.

SECTION 29. Med 22.10 (2) and (3) are amended to read:

Med 22.10 (2) CERTIFICATION STATEMENT. Each licensee shall, at the time of applying for renewal of a license under s. 448.07, Stats., certify that ~~he or she has~~, in the 2 years preceding the renewal due date, ~~completed~~ at least 30 continuing education units of acceptable continuing education were completed. At least 10 continuing education units ~~must~~ shall be completed in Category I activities.

(3) LIMITATION ON CLAIMING CONTINUING EDUCATION UNITS. ~~No additional~~ Additional continuing education units ~~are~~ may not be given for subsequent presentations of the same content.

SECTION 30. Med 22.10 (4) (title) is created to read:

Med 22.10 (4) (title) CATEGORIES OF CONTINUING EDUCATION.

SECTION 31. Med 22.10 (4) (a) to (c) and (5) are amended to read:

Med 22.10 (4) (a) ~~Category I~~ Category I. ABCP-approved perfusion meetings and related activity, including all of the following:

1. Attendance at ABCP-approved international, national, regional, or state perfusion meetings, programs, and seminars ~~in~~ at which a minimum of 75% of the contact hours consist of perfusion related material, ~~including international, national, regional or state perfusion meetings;~~ 1 One continuing education unit may be claimed for each contact hour.

2. Publication of a perfusion related book chapter or paper in a professional journal; 5 Five continuing education units may be claimed for each published book chapter or paper, subject to a maximum limit of 10 continuing education units in any given renewal period.

3. ~~Presentation of~~ Presenting a talk workshop or lecture at an international, national, regional, or state perfusion meeting; 5 Five continuing education units may be claimed for each presentation, subject to a maximum limit of 10 continuing education units in any given renewal period.

4. Presentation of a poster or other exhibit at an international, national, regional, or state perfusion meeting; 2 Two continuing education units may be claimed for each presentation, subject to a maximum limit of 4 continuing education units in any given renewal period.

5. Participation in an AC-PE site visitor workshop or volunteering as an AC-PE site visitor; 5 Five continuing education units may be claimed for each workshop or site visit, subject to a maximum limit of 10 continuing education units in any given renewal period.

6. Participation in an ABCP knowledge base survey; 2 Two continuing education units may be claimed for each survey.

7. Self-directed continuing education meeting ABCP requirements; 1 One continuing education unit may be claimed for each contact hour.

(b) ~~Category II~~ Category II. Non-accredited perfusion meetings and other medical meetings, including all of the following:

1. ~~Perfusion~~ Attendance at international, national, regional, or state perfusion or medical meetings, programs, and seminars ~~in~~ not approved by ABCP, at which a minimum of 75% of the contact hours consist of perfusion related material, ~~including international, national, state or regional perfusion meetings;~~ One-half of a continuing education unit may be claimed for each contact hour, subject to a maximum limit of 10 continuing education units in any given renewal period.

2. Manufacturer-specific and company-sponsored educational activities; 1 One continuing education unit may be claimed for each contact hour.

(c) ~~Category III~~ Category III. Individual education and other self-study activities, including all of the following:

1. Serving as a clinical instructor in an accredited perfusion training program; 2 Two continuing education units per may be claimed for this service in each year of a renewal period.

2. Serving as a didactic instructor in an accredited perfusion training program; ~~1~~ One continuing education unit per may be claimed for each contact hour, subject to a ~~maximum~~ limit of 4 continuing education units in any given renewal period.

3. Participation in an ABCP examination development workshop or survey; ~~2~~ Two continuing education units ~~per~~ may be claimed for each contact hour, subject to a ~~maximum~~ limit of 4 continuing education units in any given renewal period.

4. Self-learning activities and self-study modules, including use of audiovisual devices or electronic forums, reading scientific journals, and participation in degree-oriented, professionally related course work; and self-study modules; ~~1~~ One continuing education unit ~~per~~ may be claimed for each contact hour, subject to a ~~maximum~~ limit of 10 continuing education units in any given renewal period.

5. Presentation at a ~~non-approved~~ an international, national, regional, or state perfusion or medical meeting; that is not approved by ABCP. ~~1~~ One continuing education unit may be claimed for each hour of presentation.

6. ~~Grand~~ Participation in a grand round; ~~1~~ One continuing education unit ~~per~~ may be claimed for each contact hour, subject to a ~~maximum~~ limit of 2 continuing education units in any given renewal period.

7. Completion of Advanced cardiac life support Cardiac Life Support training; ~~2~~ Two continuing education units may be claimed for completion of this training.

(5) AUDIT. An applicant for renewal shall certify ~~his or her attendance at~~ completion of required continuing education. The board ~~may conduct a random audit of~~ all licensees on a biennial basis for compliance with continuing education requirements; ~~and shall audit~~ for compliance with the continuing education requirements any licensee who is under investigation by the board for alleged misconduct.

SECTION 32. 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)

This Proposed Order of the Medical Examining Board is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Chairperson
Medical Examining Board