

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 18-101)

PROPOSED ORDER

An order of the Medical Examining Board to **repeal** Med 20.03 (1) (c), (e), and (f) (intro.), 2., and 3. and (2), 20.05, and 20.07 (Note); to **renumber and amend** Med 20.03 (1) (f) 1., 20.04 (3), and 20.06 (6); to **amend** Med 20.01, 20.02 (intro.), (3), (4), and (Note), 20.03 (1) (intro.), (a), and (d), (3), and (Note), 20.04 (1), (2), (4) (e) and (f), (6), (7), and (8), 20.055 (1) (a), (c), and (Note), 20.06 (1) to (5), (7), and (8), and 20.07 (2); and to **create** Med 20.02 (5), 20.04 (4) (L), and 20.06 (5m) and (6) (a) to (d), relating to respiratory care practitioners.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 448.04 (1) (i), Stats.

Statutory authority:

Sections 15.08 (5) (b), 448.05 (5r) and (6), and 448.06 (2), 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 448.05 (5r), Stats., provides “[a]n applicant for a certificate or a temporary certificate to practice respiratory care shall submit evidence satisfactory to the board that the applicant is a graduate of a school with a course of instruction in respiratory care approved by the commission on accreditation of allied health education programs of the American Medical Association.”

Section 448.05 (6), Stats., provides “. . . the board shall examine each applicant it finds eligible under this section in such subject matters as the board deems applicable to the class of license or certificate which the applicant seeks to have granted. Examinations may be both written and oral.”

Section 448.06 (2), Stats., provides “[t]he board may deny an application for any class of license or certificate and refuse to grant such license or certificate on the basis of unprofessional conduct on the part of the applicant, failure to possess the education and training required for that class of license or certificate for which application is made, or failure to achieve a passing grade in the required examinations.”

Related statute or rule:

None.

Plain language analysis:

A comprehensive review of ch. Med 20 was conducted to ensure the rules are consistent with current examination and licensing practices and applicable Wisconsin statutes. As a result, the following updates have been made:

- The reference to “CRTT” (Certified Respiratory Therapy Technician) in s. Med 20.02 (3) is replaced with “CRT” (Certified Respiratory Therapist) to reflect current terminology.
- A definition is created under s. Med 20.02 (5) and terminology throughout the rules is revised to reflect that, effective January 2015, the National Board for Respiratory Care (NBRC) changed the Certified Respiratory Technician examination from the Entry Level CRT Examination to the Therapist Multiple-Choice Examination (TMC).
- Section Med 20.03 (1) is revised to remove requirements for applications submitted prior to January 1, 1992 and an obsolete requirement that an applicant provide a recent passport type photograph. The section is also revised to reflect that the current accreditation organization for schools with a course of instruction in respiratory care is the Commission on Accreditation for Respiratory Care.
- Section Med 20.04 is revised to, as required under s. 448.05 (6) (a), Stats., specify the passing score for the TMC, the statutes and rules examination, and the oral examination.
- Section Med 20.04 (7) is revised to clarify the requirement to complete further professional training or education prescribed by the Board before retaking an exam after a third failure does not apply to the NBRC examination.
- Section Med 20.05 is repealed. This provision was created at a time when results of an examination could take several months. As results of the current NBRC examination are available immediately, the temporary certificate under s. Med 20.05 is no longer necessary.
- Section Med 20.06 (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 20.04 (4) that will allow the Board to require an applicant who has violated s. Med 20.06 (5m) to complete an oral examination.
- Other provisions throughout ch. Med 20 have been updated to revise or remove outdated notes, provide clarity, and conform to current drafting standards.

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 respiratory care and the licensure of respiratory care practitioners (68 Ill. Adm. Code 1456.05 to 1456.120). The rules do not provide for a temporary license to practice respiratory care.

Iowa: Rules of the Iowa Board of Respiratory Care and Polysomnography address the practice of respiratory care and the licensure of respiratory care practitioners (654 IAC Chapters 261 to 265). The rules do not provide for a temporary license to practice respiratory care.

Michigan: Rules of the Michigan Department of Licensing and Regulatory Affairs address the practice of respiratory care and the licensure of respiratory care practitioners (Mich Admin Code, R 338.2201 to R 338.2207). Under these rules, as of December 1, 2006, Michigan stopped accepting applications for a temporary respiratory therapist license (Mich Admin Code, R 338.2203). However, Michigan statutes provide a board, including the Michigan Board of Respiratory Care, may issue a temporary license to an applicant who has completed all requirements for licensure except for examination or other required evaluation procedure or is married to a member of the armed forces (Section 16181, Public Health Code).

Minnesota:

Minnesota statutes address the practice of respiratory care and the licensure of respiratory care practitioners (2017 Minn. Stat. Chapter 147C). The statutes allow the Minnesota Board of Medical Practice to issue a temporary permit to practice as a respiratory therapist to an applicant eligible for licensure if the application for licensure is complete, all applicable requirements have been met, and a nonrefundable fee set by the Board has been paid. The permit remains valid only until the meeting of the Board at which a decision is made on the respiratory therapist's application for licensure (2017 Minn. Stat. Section 147C.15, Subdivision 3).

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of ch. Med 20 for consistency with current examination and licensing practices and applicable Wisconsin statutes and obtaining input and feedback from the Respiratory Care Practitioners Examining Council and 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 February 20, 2019, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med 20.01 is amended to read:

Med 20.01 Authority and purpose. The rules in this chapter are adopted by the medical examining board under the authority of ss. 15.08 (5) (b), 227.11 (2), and 448.40 (1), Stats., to govern the certification and regulation of respiratory care practitioners.

SECTION 2. Med 20.02 (intro.), (3), (4), and (Note) are amended to read:

Med 20.02 (intro.) Definitions. ~~As used in~~ In this chapter:

(3) ~~“CRTT”~~ “CRT” means a certified respiratory ~~therapy technician~~ therapist.

(4) “RRT” means a registered respiratory therapist.

(Note) ~~“CRTT”~~ “CRT” and “RRT” are registered trademarks of the ~~national board for respiratory care~~ National Board for Respiratory Care.

SECTION 3. Med 20.02 (5) is created to read:

Med 20.02 (5) “TMC” means the Therapist Multiple Choice Examination administered by the National Board for Respiratory Care.

SECTION 4. Med 20.03 (1) (intro.) and (a) are amended to read:

Med 20.03 (1) (intro.) Every applicant for initial certification as a respiratory care practitioner shall submit all of the following:

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

SECTION 5. Med 20.03 (1) (c) is repealed.

SECTION 6. Med 20.03 (1) (d) is amended to read:

Med 20.03 (1) (d) ~~Written verification that~~ Evidence the applicant has passed the ~~national board for respiratory care certification examination~~ examinations required ~~in~~ under s. Med 20.04 ~~(1)~~.

SECTION 7. Med 20.03 (1) (e) and (f) (intro.) are repealed.

SECTION 8. Med 20.03 (1) (f) 1. is renumbered Med 20.03 (1) (f) and amended to read:

Med 20.03 (1) (f) ~~Satisfactory evidence that~~ Evidence the applicant is a graduate of a school with a course of instruction in respiratory care approved by the ~~commission~~ Commission on accreditation ~~Accreditation of allied health education programs for~~ Respiratory Care of the American medical association.

SECTION 9. Med 20.03 (1) (f) 2. and 3. and (2) are repealed.

SECTION 10. Med 20.03 (3) and (Note) are amended to read:

Med 20.03 (3) An application for certification is not complete until the board has received both the completed application form and written verification of a passing grade directly from the ~~national board for respiratory care~~ National Board for Respiratory Care.

(Note) Application forms are available ~~on request to the board office, 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 <http://dsps.wi.gov>.

SECTION 11. Med 20.04 (1) and (2) are amended to read:

Med 20.04 (1) An applicant for certification as a respiratory care practitioner shall pass the ~~national board for respiratory care CRTT examination~~ TMC. The passing score for the TMC is 88 on the 2-digit scale.

(2) An applicant for certification as a respiratory care practitioner 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.

SECTION 12. Med 20.04 (3) is renumbered Med 20.04 (4m) and amended to read:

Med 20.04 (4m) The board designates the council as its agent for conducting oral examinations. 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 sub. (4) (a) and (b). The passing score for an oral examination is 75 percent.

SECTION 13. Med 20.04 (4) (e) and (f) are amended to read:

Med 20.04 (4) (e) Has ~~not~~ practiced respiratory care for ~~more than~~ 1,200 hours or less during the last 3 years.

(f) Has practiced respiratory care over 1,200 hours in the last 3 years, but practice was limited.

SECTION 14. Med 20.04 (4) (L) is created to read:

Med 20.04 (4) (L) Has violated s. Med 20.06 (5m).

SECTION 15. Med 20.04 (6), (7), and (8) are amended to read:

Med 20.04 (6) Where both written and oral examinations are required, they shall be scored separately and the applicant shall achieve a passing grade score on all examinations to qualify for a certificate.

(7) An applicant who fails to receive a passing score on an examination under sub. (2) or (4) may reapply by payment of the fee specified in s. 440.05, Stats. If an applicant fails ~~an~~ the examination under sub. (2) 3 times, the applicant may not retake ~~that state board~~ 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 intervals.

~~(8) 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 examination shall be administered, the~~ An oral examination concerning the circumstances described in sub. (4) (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 respiratory care.

SECTION 16. Med 20.05 is repealed.

SECTION 17. Med 20.055 (1) (a), (c), and (Note) are amended to read:

Med 20.055 (1) (a) A completed application on a form provided by the board.

~~(c) Written verification that~~ Evidence the applicant has passed the ~~national board for respiratory care certified therapy technician examination TMC.~~

(Note) Application forms are available from the ~~Department~~ department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin, 53708, professional services at (608) 266-2112 or from the department's website at <http://dsps.wi.gov>.

SECTION 18. Med 20.06 (1) to (5) are amended to read:

Med 20.06 (1) An applicant who fails the oral or statutes and rules examination may request a review of 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 19. Med 20.06 (5m) is created to read:

Med 20.06 (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 20. Med 20.06 (6) is renumbered Med 20.06 (6) (intro.) and amended to read:

Med 20.06 (6) (intro.) At the beginning of ~~the 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 tape and a copy of the master answer sheet. all of the following:

SECTION 21. Med 20.06 (6) (a) to (d) are created to read:

- Med 20.06 (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 22. Med 20.06 (7) and (8) are amended to read:

Med 20.06 (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. Bound~~ An applicant may consult bound reference books shall be permitted materials during 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 an applicant, made available to the applicant for use at a hearing, if desired. The A proctor shall may not defend the examination not or attempt to refute claims of error during the a review.

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

SECTION 23. Med 20.07 (2) is amended to read:

Med 20.07 (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 24. Med 20.07 (Note) is repealed.

SECTION 25. 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