

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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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 00-051

AN ORDER to renumber N 5.08 (2); and to create N 5.08 (2) (b), relating to renewal after five years.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

03-07-00 RECEIVED BY LEGISLATIVE COUNCIL.

03-30-00 REPORT SENT TO AGENCY.

RS:JLK:rv;jal

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

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CLEARINGHOUSE RULE 00-051

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

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

a. The first sentence of the first paragraph of the analysis refers to s. N 5.08 (2). However, the correct cross-reference for this sentence is s. N 5.08 (1). The second sentence of the first paragraph then refers to "[t]he rule." This should be changed to a reference to s. N 5.08 (2).

b. The first sentence of the second paragraph of the analysis refers to s. N 5.08 (2). However, the correct cross-reference in this sentence is s. N 5.08 (1).

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

a. In the first sentence of the second paragraph of the analysis, the phrase "years to demonstrate" should be changed to "years demonstrate."

b. Section N 5.08 (2) (b) provides that certain applicants for renewal may apply to the board for a limited license to enable the applicant to complete a nursing refresher course approved by the board. The following questions arise with respect to this provision:

- (1) While a person may apply for a limited license, it is not clear on what basis the board will make a determination as to whether to grant a limited license. Will it be granted automatically? Will the board have discretion not to grant

a limited license; if so, on what basis would such a decision be made? This should be clarified.

- (2) Is there a fee for a limited license?
- (3) How long is a limited license valid for?



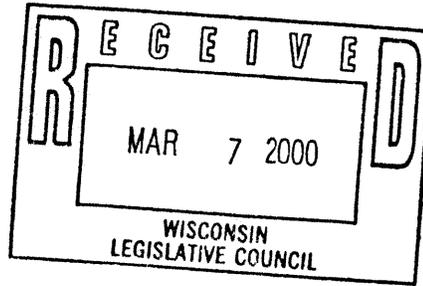
State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

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March 7, 2000



TO: Ron Sklansky, Director
Rules Clearinghouse
Wisconsin Legislative Council
1 East Main Street, Suite 401

FROM: Pamela A. Haack, Paralegal
Office of Administrative Rules
Department of Regulation and Licensing
Room 171, 1400 East Washington Avenue
(608) 266-0495

RE: Proposed Rule-Making Order of the Board of Nursing

Attached please find a proposed rule-making order of the Board of Nursing submitted under s. 227.15, Wis. Stats. The proposed order contains citations to the statutory authority under which the board intends to adopt the proposed rules and a description of the effect of the proposal.

Please stamp or sign a copy of this letter to acknowledge receipt. Please call me at 266-0495 if I can be of any assistance to the Clearinghouse in reviewing this rule.

Thank you.

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BOARD OF NURSING
BOARD OF NURSING : ADOPTING RULES
: (CLEARINGHOUSE RULE 00-)

PROPOSED ORDER

An order of the Board of Nursing to *renumber* N 5.08 (2); and to *create* N 5.08 (2) (b), relating to renewal after 5 years.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats.

Statutes interpreted: s. 440.08 (3), Stats.

Under s. N 5.08 (2), the Board of Nursing may require a credential holder who has failed to renew his or her license within 5 years after its renewal date to demonstrate continued competence in the practice of nursing as a prerequisite to credential renewal. The rule provides that the board may require demonstration of competence by various methods, including written or oral examination, documentation of nursing work in other jurisdictions, or documentation of current education or experience in the field. Where an applicant is unable to demonstrate current competence in the manner suggested, the board has required the applicant to appear before the board in order to provide the board an opportunity to determine what remedial education and training is necessary. In cases where there is no other negative information relating to the application, the board has invariably required that the applicant complete a nursing refresher course. The proposed rule would provide for a limited license to permit an applicant who is unable to demonstrate current competence to complete a nursing refresher course without the need to make a personal appearance before the board.

The board has authority under s. 440.08 (3), Stats., and s. N. 5.08 (2), to require that an applicant who has failed to renew his or her credential in more than 5 years to demonstrate current competence. In most instances, there is no adverse information relating to the applicant and the only question is whether he or she has remained current in the profession. In cases where the applicant is unable to demonstrate current competence, he or she has been required to appear before the board for a personal appearance, thus delaying the renewal of the license for two to three months. The board's invariable decision in these cases is to require simply that the applicant complete a nursing refresher course. A nursing license is a prerequisite to enrollment in nursing refresher courses, and the proposed rule would permit the applicant to receive a limited license for that purpose without suffering the expense and delay of making a personal appearance before the board.

TEXT OF RULE

SECTION 1. N 5.08 (2) is renumbered N 5.08 (2) (a).

SECTION 2. N 5.08 (2) (b) is created to read:

N 5.08 (2) (b) An applicant for renewal who has failed to renew his or her license within 5 years, and who is unable to document nursing work in other jurisdictions, or document current education or experience in the field, may apply to the board for a limited license to enable the applicant to complete a nursing refresher course approved by the board.

(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
Board of Nursing

FISCAL EFFECT

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

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3/7/2000

JUL 25 2000

**STATE OF WISCONSIN
BOARD OF NURSING**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BOARD OF NURSING
BOARD OF NURSING : ADOPTING RULES
: (CLEARINGHOUSE RULE 00-051)**

TO: Senator Judy Robson, Senate Co-Chairperson
Joint Committee for the Review of Administrative Rules
Room 15 South, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the BOARD OF NURSING is submitting in final draft form rules relating to renewal after 5 years.

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.



Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

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FAX#: (608) 267-0644

Administrative Rules in Final Draft Form

Board of Nursing

Relating to: Renewal After 5 Years

**Rule:
N 5.08**

**Clearinghouse Rule:
No. 00-051**

**STATE OF WISCONSIN
BOARD OF NURSING**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE 00-051
BOARD OF NURSING : (s. 227.19 (3), Stats.)**

I. THE PROPOSED RULE:

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

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

These rules will have no significant impact upon state or local units of government.

IV. STATEMENT EXPLAINING NEED:

Under s. N 5.08 (1), the Board of Nursing may require a credential holder who has failed to renew his or her license within 5 years after its renewal date to demonstrate continued competence in the practice of nursing as a prerequisite to credential renewal. Section N 5.08 (2) provides that the board may require demonstration of competence by various methods, including written or oral examination, documentation of nursing work in other jurisdictions, or documentation of current education or experience in the field. Where an applicant is unable to demonstrate current competence in the manner suggested, the board has required the applicant to appear before the board in order to provide the board an opportunity to determine what remedial education and training is necessary. In cases where there is no other negative information relating to the application, the board has invariably required that the applicant complete a nursing refresher course. The proposed rule would provide for a limited license to permit an applicant who is unable to demonstrate current competence to complete a nursing refresher course without the need to make a personal appearance before the board.

The board has authority under s. 440.08 (3), Stats., and s. N. 5.08 (1), to require that an applicant who has failed to renew his or her credential in more than 5 years demonstrate current competence. In most instances, there is no adverse information relating to the applicant and the only question is whether he or she has remained current in the profession. In cases where the applicant is unable to demonstrate current competence, he or she has been required to appear before the board for a personal appearance, thus delaying the renewal of the license for two to three months. The board's invariable decision in these cases is to require simply that the applicant complete a nursing refresher course. A nursing license is a prerequisite to enrollment in nursing refresher courses, and

the proposed rule would permit the applicant to receive a limited license for that purpose without suffering the expense and delay of making a personal appearance before the board.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on May 18, 2000. Deborah L. Schwallie, RN, APNP, Elm Grove, Wisconsin, representing the Wisconsin Nurses Association, appeared in support of the proposed rule. There were no other appearances, nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 5.b. Section N 5.08 (2) provided that certain applicants for renewal may apply to the board for a limited license to enable the applicant to complete a nursing refresher course approved by the board. The following questions arise with respect to this provision:

(1) While a person may apply for a limited license, it is not clear on what basis the board will make a determination as to whether to grant a limited license. Will it be granted automatically? Will the board have discretion not to grant a limited license; if so, on what basis would such a decision be made? This should be clarified.

Response: The rule states that an applicant for renewal may apply to the board for a limited license, not that the license will automatically be granted. The board currently has an application for reinstatement which requires all of the same information regarding qualifications and past arrest, conviction and license disciplinary actions as required of a new applicant. To attempt to incorporate into the rule all of the bases upon which the board will make a determination to grant or deny reinstatement would result in a confusing and superfluous multi-page document.

(2) Is there a fee for a limited license?

Response: This rule provides for the renewal of the license. There is therefore an established fee set forth in s. 440.08, Stats.

(3) How long is a limited license valid for?

Response: A license carrying a limitation is renewed at the same time, and in the same manner, as any other license. The limitation remains until the board grants the licensee's request to drop it. These are commonly understood principles that don't need to be enunciated in the rule. Nonetheless, the rule is clarified by adding the following sentence at the end of s. N 5.08 (2) (b): "Upon successful completion of an approved nursing refresher course, the license-holder may petition the board for reinstatement of a full license."

The remaining recommendations suggested in the Clearinghouse Report were accepted in whole.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

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

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STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BOARD OF NURSING
BOARD OF NURSING : ADOPTING RULES
: (CLEARINGHOUSE RULE 00-051)

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The board has authority under s. 440.08 (3), Stats., and s. N. 5.08 (1), to require that an applicant who has failed to renew his or her credential in more than 5 years demonstrate current competence. In most instances, there is no adverse information relating to the applicant and the only question is whether he or she has remained current in the profession. In cases where the applicant is unable to demonstrate current competence, he or she has been required to appear before the board for a personal appearance, thus delaying the renewal of the license for two to three months. The board's invariable decision in these cases is to require simply that the applicant complete a nursing refresher course. A nursing license is a prerequisite to enrollment in nursing refresher courses, and the proposed rule would permit the applicant to receive a limited license for that purpose without suffering the expense and delay of making a personal appearance before the board.

TEXT OF RULE

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SECTION 2. N 5.08 (2) (b) is created to read:

N 5.08 (2) (b) An applicant for renewal who has failed to renew his or her license within 5 years, and who is unable to document nursing work in other jurisdictions, or document current education or experience in the field, may apply to the board for a limited license to enable the applicant to complete a nursing refresher course approved by the board. Upon successful completion of an approved nursing refresher course, the license-holder may petition the board for reinstatement of a full license.

(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
Board of Nursing

FISCAL EFFECT

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

FINAL REGULATORY FLEXIBILITY ANALYSIS

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

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