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Details: Emergency Rule extension requests by Department of Regulation and Licensing.
(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)

Jim Doyle
Governor

Celia M. Jackson
Secretary

WISCONSIN DEPARTMENT OF
REGULATION & LICENSING

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December 15, 2008

Senator Robert Jauch, Senate Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 118 South, State Capitol
Madison, WI 53702

Representative Daniel LeMahieu, Assembly Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 17 North, State Capitol
Madison, WI 53702

RE: Request for Extension of Emergency Rule, Department of Regulation and Licensing

Dear Senator Jauch and Representative LeMahieu:

I am writing to request a 60-day extension of the emergency rule relating to examinations for substance abuse professionals. A copy of the emergency rule is attached.

The current rules require an applicant for a clinical substance abuse counselor credential to pass an oral examination. The organization that produced that examination has ceased use of the examination as of June 1, 2008. This emergency rule creates a period for a transition to enable a category of applicants to get a clinical substance abuse counselor credential without having to wait until a permanent rule is in effect. This rule will help ensure there is no shortage of treatment professionals and is therefore necessary to maintain the health, safety and welfare of the public.

The Department held the public hearing on both the emergency rule and the regular rule on November 11, 2008. The first period of the emergency rule expired on November 12, 2008. Prior to the expiration, the JCRAR granted a 60-day extension until January 12, 2009. The Department is requesting a 2nd extension of the emergency rule to cover the period prior to the filing the rule with the legislature for review by the legislative standing committees.

Thank you.

Sincerely,


Jeff Scanlan

Director, Bureau of Health Service Professions
Wisconsin Department of Regulation and Licensing

cc: Peggy E. Wichmann, Legal Counsel
Larry Martin, Executive Assistant
Pamela Haack, Paralegal

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	
PROCEEDINGS BEFORE THE	:	ORDER ADOPTING
DEPARTMENT OF REGULATION	:	EMERGENCY RULES
AND LICENSING	:	

ORDER

An order of the Department of Regulation and Licensing to repeal RL 161.04 (3) (e); to renumber and amend RL 161.04 (3) (a) 1.; and to create RL 161.04 (3) (a) 2. and a Note following RL 161.04 (3) (a) 2., relating to examinations for substance abuse professionals.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 440.88, Stats.

Statutory authority:

Section 227.11 (2), Stats., and Subchapter VII of ch. 440, Stats.

Explanation of agency authority:

Subchapter VII of ch. 440, Stats., Substance Abuse Counselors, Clinical Supervisors, and Prevention Specialists, directs the department to write rules that establish minimum standards and qualifications for the certification of substance abuse professionals.

Related statute or rule:

Section 440.88 (3) (a), (b) and (c), Stats., and s. RL 161.04 (3) (e).

Plain language analysis:

Currently, an applicant for a clinical substance abuse counselor credential must complete and pass the International Certification and Reciprocity Consortium's (IC&RC) written examination and case presentation method interview. As of June 1, 2008, the IC&RC will discontinue using the case presentation method interview and will replace it by adding a new section to its written examination. This emergency rule repeals the requirement that an applicant pass the IC&RC's case presentation method interview for applicants who take the IC&RC written examination after June 1, 2008.

This rule also creates a provision that would allow applicants for the clinical substance abuse credential, who took the IC&RC written examination before June 1, 2008, to pass either the new IC&RC written examination or the case presentation method interview until December 31, 2008. This rule will help applicants who took the written examination before June 1, 2008, qualify for a clinical substance abuse counselor credential. It gives them the choice of using the old examination system or the new. Beginning December 31, 2008, all applicants will have to pass the IC&RC's new written examination to receive a clinical substance abuse counselor credential.

SECTION 1 renumbers a provision.

SECTION 2 creates a pathway for certain applicants for a clinical substance counselor credential to meet a requirement under the law currently in effect that is being repealed by this rule.

SECTION 3 repeals a requirement for a clinical substance abuse counselor credential that is no longer being provided after June 1, 2008.

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

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by this rule.

Comparison with rules in adjacent states:

Minnesota:

In Minnesota, although licensure is available through the state and certification through the Minnesota Certification Board (MCB – a private organization), state licensure is required for practice, with exemptions for other professional licenses. The certification offered by the MCB is not recognized by the state. The MCB offers certification based upon the standards of the IC&RC, which includes supervised practice requirements, specialized education and training in substance abuse counseling, and counselor examinations. Minnesota, in part to satisfy the standards of the licensure, will accept the certificates provided by the MCB as fulfilling their licensure requirements.

Licensure in Minnesota requires the following (before July 1, 2008): an associate degree or equivalent credit hours; 270 hours of substance abuse related education; completion of either the IC&RC Case Presentation Method Oral examination or 2,000 hours of supervised practice; passage of the NAADAC or IC&RC Counselor Examination. After July 1, 2008, Minnesota requires: a bachelor's degree including 18 semester credits or 270 clock hours of substance abuse related education; either the case presentation method, or a plan for 2000 hours of professional practice or proof of 2000 hours of professional practice; passage of the NAADAC or IC&RC counselor examination.

Minnesota will continue to use the IC&RC case presentation method after the IC&RC formally discontinues the use in certification standards. The IC&RC is formally requiring all jurisdictions that elect to use the CPM examination to sign an indemnity agreement allowing states to continue to offer the examination.

Michigan:

In Michigan, substance abuse counselor certification is voluntary; however, at the county level, certification is only driven by allocating funding to county-run treatment centers, which use certified substance abuse counselors. Substance abuse counselors are certified and regulated by the Michigan Certification Board, a private agency.

Michigan no longer uses the IC&RC Case Presentation Method Oral Examination in certification procedures for their counselors.

Illinois:

Illinois mandates that licensed alcohol and drug abuse counselors are used in their state certified alcohol and drug abuse clinics. Under Illinois code: Title 77: Chapter 2060.309 part of the staffing requirements of their clinics require counselors to hold clinical certification as a Certified Alcohol and Drug Counselor issued by the Illinois Alcoholism and Other Drug Abuse Professional Certification Association (IAODAPCA).

IAODAPCA requirements are based off those of the IC&RC. The reciprocal level of the certified drug and alcohol counselor, which is analogous to Wisconsin's clinical substance abuse counselor, requires passage of the IC&RC case presentation method oral examination.

See: §20 ILCS 301/15-5, 77 Ill. Adm. Code 2060.20 et. seq.

Iowa:

The state of Iowa does not credential AODA or Substance Abuse Professionals, but does mandate the certification and use of those professions in their state certified alcohol and drug abuse clinics. Under Iowa administrative code: 641 IAC 155.21 (8) i., part of the staffing requirements of their clinics require that persons providing screening, evaluations, assessments or treatment shall be certified through the Iowa Board of Substance Abuse Certification, a private agency, or certified by an IC&RC member board in the states of Illinois, Minnesota, Nebraska, Missouri, South Dakota, and Wisconsin.

The Iowa Certification Board modeled their credentials from those requirements specified by the IC&RC. Iowa has advanced drug and alcohol counselor certification, which is analogous to our clinical substance abuse counselor certification, requires the passage of the IC&RC written counselor examination. The advanced level certification is not considered reciprocal and therefore they do not require the IC&RC oral Case Presentation Method examination. For those Iowa counselors who wish to bring their

credentials in line with IC&RC's reciprocity requirements, they were required to complete the written and oral portion of the IC&RC CPM examination.

See: §641 IAC chapter 155

Summary of factual data and analytical methodologies:

The Department of Regulation and Licensing is amending the requirement for successful completion of the oral examination as a precondition for certification as a clinical substance abuse counselor because of the change in certification requirements of the International Certification & Reciprocity Consortium (IC&RC). The standards for achieving clinical substance abuse counselor certification were set so that the requirements for the certification would be equivalent of the IC&RC certified alcohol and drug counselor and further, Wisconsin utilizes their examination in the process. Elimination of the oral examination and the change in the certification standards requires Wisconsin to amend rules of certification.

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

Small business should not be impacted as the examination requirements, and thusly associated costs to achieve certification, are effectively reduced by the elimination of the examination. The oral examination was costly to administer and was a barrier to entry to the field. To achieve certification, a counselor must still pass the written counselor examination, but no longer must complete the oral examination.

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 and the Division of Professional Credentialing. The total one-time salary and fringe costs are estimated at \$1,557.

Effect on small business:

This rule 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 larry.martin@drl.state.wi.us, 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@drl.state.wi.us.

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@drl.state.wi.us. Comments must be received on or before July 7, 2008 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. RL 161.04 (3) (a) is renumbered RL 161.04 (3) (a) 1. and is amended to read:

RL 161.04 (3) (a) 1. Successful passage of the International Certification and Reciprocity Consortium Alcohol and Other Drug Abuse written counselor certification examination; or,

SECTION 2. RL 161.04 (3) (a) 2. and a Note following RL 161.04 (3) (a) 2. are created to read:

RL 161.04 (3) (a) 2. Until December 31, 2008, an applicant who passed the International Certification and Reciprocity Consortium Alcohol and Other Drug Abuse written counselor certification examination before June 1, 2008, successful passage of either the International Certification and Reciprocity Consortium's written counselor certification examination or the case presentation method interview provided by the department.

Note: Prior to June 1, 2008, to receive a clinical substance abuse counselor credential, an applicant had to pass a written counselor examination and a case presentation method oral interview (oral examination) authorized by the International Certification & Reciprocity Consortium (IC&RC). Effective June 1, 2008, the IC&RC withdrew its authorization for the oral examination and instead requires an applicant to complete their updated written counselor examination which includes a section to replace the oral examination. Pursuant to an agreement with the IC&RC, the department will continue to offer the oral examination for applicants who took the written examination prior to June 1, 2008. Until December 31, 2008, those applicants have the choice of

passing either the IC&RC's updated written counselor examination or the oral examination provided by the department.

SECTION 3. RL 161.04 (3) (e) is repealed.

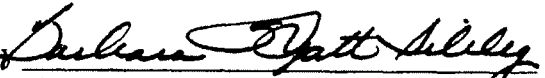
FINDING OF EMERGENCY

The department has made a finding of emergency. The current rules require an applicant for a clinical substance abuse counselor credential to pass an oral examination. The company that produced that examination is not giving that examination after June 1, 2008. This emergency rule creates a time period for a transition to enable a category of applicants to get a clinical substance abuse counselor credential. Persons holding a clinical substance abuse counselor credential can apply for a supervisory credential. There is a strong need for more supervisors in this field because services can only be provided under supervision. This rule will enable more applicants to receive a supervisor credential and is therefore necessary to maintain the health, safety and welfare of the public.

This emergency rule shall take effect upon publication in the official state newspaper.

Dated 4/12/08

Agency


Barbara Wyatt Sibley, Deputy Secretary
Department of Regulation and Licensing

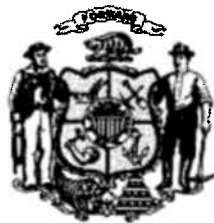
RL 161.04-(Clinical substance abuse counselors exam) Order Adopting Emergency Rule 6-4-08



SENATOR JIM HOLPERIN
CO-CHAIR

PO Box 7882
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(608) 266-2509



REPRESENTATIVE JOSH ZEPNICK
CO-CHAIR

PO BOX 8953
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January 6, 2009

Jeff Scanlan, Director
Wisconsin Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Dear Director Scanlan:

Re: RL 161.04 Substance Abuse Professionals – Request for Rule Extension

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 6, 2009 and adopted the following motion:

Moved by Representative Hebl, seconded by Senator Lehman to combine the three rule extension requests and vote on them en masse, with the outcome applied to each of the respective requests, be granted a 60-day emergency rule extension from the date of the proceedings of this committee.

Motion Passed 10-0.

Pursuant to s. 227.24(2)(c), stats., we are notifying the Legislative Reference Bureau of the Committee's action through copies of this letter.

Sincerely,

A handwritten signature in black ink that reads "Jim Holperin". The signature is written in a cursive style with a large initial "J".

Senator Jim Holperin
Senate Co-Chair

A handwritten signature in black ink that reads "Josh Zepnick". The signature is written in a cursive style with a large initial "J".

Representative Josh Zepnick
Assembly Co-Chair

cc: Bruce Hoesly, Legislative Reference Bureau
Ron Sklansky, Legislative Council



Jim Doyle
Governor

WISCONSIN DEPARTMENT OF
REGULATION & LICENSING

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Celia M. Jackson
Secretary



June 19, 2009

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

Representative Josh Zepnick, Assembly Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 219 North, State Capitol
Madison, WI 53702

RE: Request for Extension of Emergency Rule, Pharmacy Examining Board

Dear Senator Holperin and Representative Zepnick:

I am writing to request a 60-day extension of the emergency rule relating to the practical examination. A copy of the emergency rule is attached.

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.

The public hearing on both the emergency rule and the permanent rule was held on April 8, 2009. The emergency rule was effective on February 28, 2009 and is effective through July 27, 2009. The board is submitting the Report to the Legislature on June 19, 2009. Therefore, the board is requesting an extension of the emergency rule pending review by the legislative standing committees.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Greg Weber, R.Ph." with a flourish at the end.

Greg Weber, R.Ph., Chair
Pharmacy Examining Board

cc: Tom Ryan, Bureau Director
Ruby Jefferson-Moore, Legal Counsel
Gail Sumi, Administrator, Division of Board Services
Mike Berndt, Department General Counsel
Hector Colon, Executive Assistant
Pamela Haack, Paralegal

STATE OF WISCONSIN
PHARMACY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING: : ORDER OF THE
PROCEEDINGS BEFORE THE : PHARMACY EXAMINING BOARD
PHARMACY EXAMINING BOARD : ADOPTING EMERGENCY RULES

ORDER

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.

ANALYSIS

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 upon publication in the Wisconsin State Journal.

Dated

2-25-09

Agency

Greg Weber, RPh
Chairperson

Pharmacy Examining Board

Phar 4.02 (2) (Practical examination) Order Adopting Emergency Rule 2-25-09