

Report From Agency

STATE OF WISCONSIN
PHARMACY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING: : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PHARMACY EXAMINING BOARD
PHARMACY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 09-019)

PROPOSED ORDER

An order of the Pharmacy Examining Board to repeal Phar 2.06 (3) (a) and 4.02 (2); to amend Phar 2.02 (1) (intro.), 2.03 (1) and (4), and 2.05 (1) (intro.); and to create Phar 2.06 (3) (c), 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 repeals the phrase "no later than 30 days" since that requirement only relates to applications for the practical examination.

SECTION 2 repeals the reference to s. Phar 4.02 (2) since that subsection is being repealed. SECTION 2 also repeals the reference to the “practical examination” in s. Phar 2.03 (4).

SECTION 3 repeals the phrase “no later than 30 days” since that requirement only relates to the practical examination.

SECTION 4 repeals s. Phar 2.06 (3) (a) since the practical examination is being repealed.

SECTION 5 creates s. Phar 2.06 (3) (c) to state that an applicant may be required to take another examination, as determined by the board. There may be individual circumstances in which the board may require an applicant to pass an examination to establish whether the applicant is minimally competent to engage in the practice of pharmacy. The board will make this determination on a case-by-case basis.

SECTION 6 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 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 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 finds that this rule has no significant fiscal effect.

Effect on small business:

These proposed 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.

TEXT OF RULE

SECTION 1. Phar 2.02 (1) (intro.) is amended to read:

Phar 2.02 Application procedure for original licensure. (1) (intro.) Each applicant for original licensure as a pharmacist shall submit a completed notarized application ~~no later than 30 days~~ prior to the examination date on forms provided by the board. The application shall include all of the following:

SECTION 2. Phar 2.03 (1) and (4) are amended to read:

Phar 2.03 Examinations for original licensure. (1) An applicant for original licensure as a pharmacist is required to pass the examinations identified in s. Phar 4.02 (1), ~~(2)~~ and (3).

(4) An applicant for licensure as a pharmacist shall not be eligible to be admitted to ~~the practical examination,~~ NAPLEX or the multi-state pharmacy jurisprudence examination prior to completing an internship in the practice of pharmacy and either obtaining certification by the foreign pharmacy graduate examination committee or graduating from a school or college of pharmacy approved by the board.

SECTION 3. Phar 2.05 (1) (intro.) is amended to read:

Phar 2.05 Application procedure for persons licensed in another state. (1) (intro.) Each applicant licensed as a pharmacist in another state shall file with the board, ~~no later than 30 days~~ prior to the examinations, the following:

SECTION 4. Phar 2.06 (3) (a) is repealed.

SECTION 5. Phar 2.06 (3) (c) is created to read:

Phar 2.06 (3) (c) Any other examination, as determined by the board.

SECTION 6. Phar 4.02 (2) is repealed.

(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
Pharmacy Examining Board

Phar 4.02 (2) CR09-019 (Practical examination) Draft to Leg 6-17-09