STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE
MEDICAL EXAMINING BOARD

ORDER OF THE MEDICAL EXAMINING BOARD
ADOPTING RULES
(CLEARINGHOUSE RULE 15-047)

ORDER

An order of the Medical Examining Board to repeal Med 1.06 (5), 1.07, 1.08 (1), and 1.09, amend Med 1.01, 1.02 (2) and (3) (a), (b), and (c), 1.06 (1) (a) (intro.) and 9., (b), and (d), (2), and (3) (a), (b), (c), (d), (e), and (f) (intro.) and 2., 1.08 (2), 14.03, and 14.06 (2) (intro.), and create Med 1.015 (2m), 1.02 (3) (cm), and 1.06 (3) (bm) and (4), relating to general update and cleanup of rules.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 15.08 (5) (b), 440.08 (2), 448.05 (2) (c), and 448.40 (1), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 448.05 (2) (c) and (6) (a), and 448.40 (1), Stats.

Explanation of agency authority:

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

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency's rule-making authority, stating an agency, "may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation."

Section 448.05 (2) (c), Stats., provides "[t]he board may promulgate rules specifying circumstances in which the board, in cases of hardship or in cases in which the applicant possesses a medical license issued by another jurisdiction, may grant a waiver from any requirement under par. (a) or (b). The board may grant such a waiver only in accordance with those rules."

Section 448.05 (6) (a), 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. In lieu of its own examinations, in whole or in part, the board may make such use as it deems appropriate of examinations prepared, administered, and scored by national examining agencies,

or by other licensing jurisdictions of the United States or Canada. The board shall specify passing grades for any and all examinations required."

Section 448.40 (1), Stats., provides "[t]he board may promulgate rules to carry out the purposes of this subchapter, including rules requiring the completion of continuing education, professional development, and maintenance of certification or performance improvement or continuing medical education programs for renewal of a license to practice medicine and surgery."

Related statute or rule:

None.

Plain language analysis:

The rules update chs. Med 1 and 14 relating to licenses to practice medicine and surgery and biennial registration. The rules better align with statute, reflect current practices, and provide a clearer regulatory landscape for applicants.

Current rules contain provisions relating to an open-book examination on statutes and rules governing the practice of medicine and surgery in Wisconsin. As the Board no longer requires an applicant for licensure to practice medicine and surgery to take the statutes and rules examination, the rules remove all references to it.

2015 Wisconsin Act 269 removed a requirement that examinations for licensure to practice medicine and surgery be limited to those administered by national organizations. As a result, the Board is conducting an oral examination in lieu of the oral interview referenced in current rules. The rules replace references to the oral interview with the oral examination, specify how the oral examination is administered, and update the criteria the Board may use to determine if an applicant is required to take the oral examination.

Current rules do not address the Comprehensive Osteopathic Medical Licensing Examination, commonly known as the COMLEX-USA. The rules specify the Board requirements for the COMLEX-USA examination.

The rules update the list of board-recognized accrediting agencies to include 2 internationally recognized accrediting agencies not listed in the current rules, the World Directory of Medical Schools and the Royal College of Physicians and Surgeons of Canada.

The rules more explicitly refer to section 448.05 (2) (c) of the Wisconsin Statutes as the Board's authority to grant waivers from the required 24 months of postgraduate training in programs accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association in cases of hardship and for applicants who demonstrate substantially equivalent education and training.

Current rules indicate the Board administers and determines eligibility for the USMLE Step 3, which does not reflect current practices. In addition, the USMLE Step 2 is administered in 2 parts, which is not reflected in current rules. The rules make revisions to reflect current practices.

The renewal date currently specified in ch. Med 14 does not match the statutory renewal date for a doctor of osteopathy. The rules align the renewal dates for licensees with the dates provided by statute.

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 medical licensing, renewal, and restoration procedure (68 Ill. Adm. Code 1285.20 to 1285.140). The rules include provisions concerning licensure by examination (68 Ill. Adm. Code 1285.70), licensure by endorsement (68 Ill. Adm. Code 1285.80), and renewals (68 Ill. Adm. Code 1285.80). Illinois currently requires an applicant for a medical license to pass the United States Medical Licensing Examination. There is no requirement for completion of an oral examination or interview.

Iowa:

Rules of the Iowa Board of Medicine address permanent physician licensure (653 IAC 9.1 to 9.20). The rules include provisions concerning licensure by examination (653 IAC 9.4), licensure by endorsement (653 IAC 9.5), and renewal of a permanent license (653 IAC 9.13). Iowa currently requires an applicant for physician licensure to pass the United States Medical Licensing Examination, the Comprehensive Osteopathic Medical Licensing Examination, or the Medical Council of Canada Examination. An oral interview may be required if there are questions or concerns regarding an applicant.

Michigan:

Rules of the Michigan Department of Licensing and Regulatory Affairs address medical licensure (Mich Admin Code, R 338.2313 to R 338.2319). The rules include provisions concerning licensure by examination (Mich Admin Code, R 338.2316 and R 338.2317) and licensure by endorsement (Mich Admin Code, R 338.2318 and R 338.2319). Michigan currently requires an applicant for a medical license to pass the examination developed and scored by the National Board of Medical Examiners. There is no requirement for completion of an oral examination or interview.

Minnesota:

Rules of the Minnesota Board of Medical Practice address licensure to practice medicine and surgery (Minnesota Rules, chapter 5600). The rules include provisions concerning license by examination (Minnesota Rules, Part 5600.0300 to 5600.0500), license by endorsement (Minnesota Rules, Part 5600.0700) and license renewal procedures (Minnesota Rules, Part 5600.0605). Minnesota currently requires an applicant for a medical license to pass the examination prepared and graded by either the Federation of State Medical Boards or the National Board of Medical Examiners. There is no requirement for completion of an oral examination or interview.

Summary of factual data and analytical methodologies:

The rules were developed by reviewing applicable statutory provisions in conjunction with current rules 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 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 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 Kirsten.Reader@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, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. Med 1.01 is amended to read:

Med 1.01 Authority and purpose. The rules in this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5), 227.11, 448.05 (2) (c), and 448.40, Stats., and govern application and examination for license to practice medicine and surgery under s. 448.04 (1) (a), Stats.~~, (hereinafter "regular license").~~

SECTION 2. Med 1.015 (2m) is created to read:

Med 1.015 (2m) "Regular license" means a license to practice medicine and surgery under s. 448.04 (1) (a), Stats.

SECTION 3. Med 1.02 (2) and (3) (a), (b), and (c) are amended to read:

Med 1.02 (2) Verified documentary evidence of graduation from a medical or osteopathic school approved by the board. The board recognizes as approved those medical or osteopathic schools ~~recognized and approved~~ accredited at the time of the applicant's graduation therefrom by the American ~~osteopathic association~~ Osteopathic Association, or the ~~liaison committee on medical education~~ Liaison Committee on Medical Education, or their successors. If an applicant is not a graduate of a medical school approved by the board, but is a graduate of a medical school recognized and listed as such by the ~~world health organization of the united nations~~ World Directory of Medical Schools or its predecessor the International Medical Education Directory, such applicant shall submit verified documentary evidence of graduation from such school and also verified documentary evidence of having passed the examinations ~~conducted~~ required by the ~~educational council for foreign medical graduates~~ Educational Council for Foreign Medical Graduates or successors, and shall also present for the board's inspection the originals thereof, and if such medical school requires either social service or internship or both of its graduates, and if the applicant has not completed either such required social service or

internship or both, such applicant shall also submit verified documentary evidence of having completed a 12 month supervised clinical training program under the direction of a medical school approved by the board.

(3) (a) Verification of satisfactory completion by the applicant of 24 months of postgraduate training in one or more programs accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or a successor organization; or documentary evidence that the applicant is currently enrolled in a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education, or the American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada, or a successor organization and has received credit for 12 consecutive months of postgraduate training in that program and an unrestricted endorsement from the postgraduate training director that the applicant is expected to complete at least 24 months of postgraduate training.

(b) If an applicant is a graduate of a foreign allopathic or osteopathic medical school, then the applicant must provide a verified certificate showing satisfactory completion of 24 months of postgraduate training in one or more programs accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, the Royal College of Physicians and Surgeons of Canada, or a successor organization; or documentary evidence that the applicant is currently enrolled in a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, the Royal College of Physicians and Surgeons of Canada, or a successor organization and has received credit for 12 consecutive months of postgraduate training in that program and an unrestricted endorsement from the postgraduate training director that the applicant is expected to complete at least 24 months of postgraduate training.

(c) If the applicant ~~is a graduate of a foreign allopathic or osteopathic medical school~~ possesses a medical license issued by another jurisdiction and has not completed 24 months of postgraduate training approved by the board and is not currently enrolled in a postgraduate training program but the applicant has other professional experience which the applicant believes has given that applicant the education and training substantially equivalent to 24 months of postgraduate training, then the applicant may submit the documented education and training demonstrating substantially equivalent education and training. The board will review the documented education and training and may make further inquiry, including a personal interview of the applicant, as the board deems necessary to determine whether substantial equivalence in fact exists. The burden of proof of such equivalence shall lie upon the applicant. If the board finds that the documented education and training is substantially equivalent to the required training and experience the board may ~~accept the experience in lieu of requiring the applicant to have completed 24 months of postgraduate training in a program approved by the board~~ grant a waiver of the requirements under par. (a) or (b).

SECTION 4. Med 1.02 (3) (cm) is created to read:

Med 1.02 (3) (cm) An applicant may apply to the board for waiver of the requirements of par. (a) or (b) on grounds of prolonged illness or disability or other similar hardship, and each case will be considered individually on its merits by the board.

SECTION 5. Med 1.06 (1) (a) (intro.) and 9., (b), and (d), (2), and (3) (a) and (b) are amended to read:

Med 1.06 (1) (a) (intro.) All applicants shall complete the ~~computer-based~~ examination under sub. (3) (b)~~, and an open-book examination on statutes and rules governing the practice of medicine and surgery in Wisconsin~~. In addition, an applicant may be required to complete an oral ~~interview~~ examination if the applicant:

9. Has ~~within the past 2 years~~ engaged in the illegal use of controlled substances.

(b) An application filed under s. Med 1.02 shall be reviewed by an application review panel of at least 2 board members designated by the chairperson of the board. The panel shall determine whether the applicant is eligible for a regular license without completing an oral ~~interview~~ examination.

(d) ~~Written and computer-based~~ All written examinations and oral ~~interviews~~ examinations as required shall be scored separately and the applicant shall achieve a passing grade on all examinations to qualify for a license.

(2) The board will notify each applicant ~~found eligible for~~ required to complete an oral examination of the time and place scheduled for that applicant's ~~examinations~~ examination. Failure of an applicant to appear for ~~examinations~~ an examination as scheduled ~~will~~ may void that applicant's application and require the applicant to reapply for licensure, unless prior scheduling arrangements have been made with the board by the applicant.

(3) (a) The board accepts the results of the FLEX ~~examination~~ administered on or before December 31, 1993, as its written examination and requires a score of not less than ~~75.0 on each component of the 2-component~~ 75 on both Component 1 and Component 2 of the FLEX ~~examination~~ administered on or after January 1, 1985. ~~Every applicant shall have taken the complete 2-component examination the first time the applicant was admitted to the FLEX examination~~.

(b) Commencing January 1, 1994, the board ~~accepts~~ requires the 3-step USMLE sequence as its written or computer-based examination ~~and administers step 3 of the sequence~~. ~~Minimum standard~~ The minimum passing ~~scores~~ score for ~~each step~~ Step 1, Step 2 CK, and Step 3 shall be not less than ~~75.0~~ 75 on the 2-digit scale. Step 2 CS, which is scored as pass or fail, shall be passed. Applicants who have completed a standard M.D. ~~training~~ or D.O. medical education program shall complete all 3 steps of the examination sequence within 10 years from the date upon which the applicant first passes a step, either ~~step~~ Step 1 or ~~step~~ Step 2. Applicants who have completed a combined M.D. or D.O. and Ph.D. medical scientist training program shall complete all 3 steps of the examination sequence within 12 years from the date upon which the applicant first passes a step, either ~~step~~ Step 1 or ~~step~~ Step 2. Applicants who have passed a step may not repeat the step unless required to do so in order to comply with the 10-year or 12-year time limit. If the applicant fails to achieve a passing grade on any step, the applicant may apply for and be reexamined on only the step failed~~ according to the reexamination provisions of s. Med 1.08 (1)~~.

SECTION 6. Med 1.06 (3) (bm) is created to read:

Med 1.06 (3) (bm) The board shall waive completion of the 3-step USMLE sequence for an applicant who has passed all 3 levels of the Comprehensive Osteopathic Medical Licensing Examination, commonly known as the COMLEX-USA. The applicant shall have achieved a minimum passing score for Level 1, Level 2-CE, and Level 3 of not less than 75 on the 2-digit scale. Level 2-PE, which is scored as pass or fail, shall be passed.

SECTION 7. Med 1.06 (3) (c), (d), (e), and (f) (intro.) and 2. are amended to read:

Med 1.06 (3) (c) ~~Prior to the January 1, 2000, the~~ The board shall waive completion of ~~steps~~ Steps 1 and 2 of the USMLE sequence for applicants who have passed FLEX ~~component~~ Component 1 prior to January 1, 2000; and shall waive ~~step~~ Step 3 of the USMLE sequence for applicants who have passed FLEX ~~component~~ Component 2 prior to January 1, 2000. ~~Prior to January 1, 2000, the~~ The board shall waive any step of the USMLE sequence for applicants who have passed the corresponding part of the NBME examination prior to January 1, 2000.

(d) The board may waive the requirement for written or computer-based examinations required in this section for any applicant who has achieved ~~a~~ an overall FLEX weighted average ~~score~~ of no less than ~~75.0 on all 3 components of~~ 75 on the FLEX ~~examination~~ taken prior to January 1, 1985 in a single session in another licensing jurisdiction in the United States or Canada, in no more than 3 attempts. If the applicant had been examined 4 or more times before achieving a weighted average score of no less than ~~75.0 on all 3 components~~ 75, the applicant shall meet the requirements specified in s. Med 1.08 (2).

(e) The board may waive the requirement for written or computer-based examinations required in this section for any applicant who has achieved a score of no less than ~~75.0~~ 75 on ~~each of the 2 components~~ Components 1 and 2 of the FLEX ~~examination~~ administered on or after January 1, 1985 in another licensing jurisdiction in the United States or Canada, if the applicant achieved a score of no less than ~~75.0~~ 75 on each of the 2 components in no more than 3 attempts. If the applicant has been examined 4 or more times before achieving a score of ~~75.0~~ 75 on either or both components of the FLEX ~~examination~~, the applicant shall meet the requirements specified in s. Med 1.08 (2).

(f) (intro.) An applicant who has passed all ~~3~~ components of any of the examinations of the following boards and councils may submit to the board verified documentary evidence thereof, and the board will accept this in lieu of requiring further written or computer-based examination of the applicant~~.~~:

2. National Board of Osteopathic Medical Examiners ~~of Osteopathic Physicians and Surgeons~~.

SECTION 8. Med 1.06 (4) is created to read:

Med 1.06 (4) (a) An oral examination of an applicant is conducted by one or more physician members of the board. The purpose of an oral exam is to evaluate the applicant's eligibility for a regular license under the applicable circumstances specified in s. Med 1.06 (1) (a) 1. to 11. The passing grade for an oral exam under this paragraph is 90 percent.

(b) Any applicant who fails the oral examination under par. (a) shall be examined by the board. The grade of an exam under this paragraph shall be the applicant's final grade for the oral examination under this subsection. The passing grade for an exam under this paragraph is 90 percent.

SECTION 9. Med 1.06 (5), 1.07, and 1.08 (1) are repealed.

SECTION 10. Med 1.08 (2) is amended to read:

Med 1.08 (2) If an applicant has been examined 4 or more times in another licensing jurisdiction in the United States or Canada before achieving a passing grade in written or computer–based examinations also required under this chapter, the board may require the applicant to submit evidence satisfactory to the board of further professional training or education in examination areas in which the applicant had previously demonstrated deficiencies. If the

evidence provided by the applicant is not satisfactory to the board, the board may require the applicant to obtain further professional training or education as the board deems necessary to establish the applicant's fitness to practice medicine and surgery in this state. In order to determine any further professional training or education requirement, the board shall consider any information available relating to the quality of the applicant's previous practice, including the results of the applicant's performance on the oral ~~interview~~ examination required under s. 448.05 (6), Stats., and s. Med 1.06.

SECTION 11. Med 1.09 is repealed.

SECTION 12. Med 14.03 is amended to read:

Med 14.03 Registration required; method of registration. Each licensee shall register biennially with the board. Prior to ~~November 1 of each odd−numbered year~~ the renewal date under s. 440.08 (2), Stats., the department shall mail to each licensee at his or her last known address as it appears in the records of the board an application form for registration. Each licensee shall complete the application form and return it with the required fee to the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 prior to the next succeeding ~~November 1~~renewal date under s. 440.08 (2), Stats. The board shall notify the licensee within 30 business days of receipt of a completed registration form whether the application for registration is approved or denied.

SECTION 13. Med 14.06 (2) (intro.) is amended to read:

Med 14.06 (2) (intro.) Failure to renew a license by ~~November 1 of odd− numbered years~~ the renewal date under s. 440.08 (2), Stats., shall cause the license to lapse. A licensee who allows the license to lapse may apply to the board for reinstatement of the license as follows:

SECTION 14. 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)