



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 01-068

AN ORDER to repeal RL 10.04 (2) (b) (intro.); to renumber RL 10.04 (2) (b) 2.; to renumber and amend RL 10.04 (2) (b) 1.; and to amend RL 10.03 and 10.04 (2) (a) and (3) Note, relating to certification of optometrists to use diagnostic pharmaceutical agents.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

06-11-01 RECEIVED BY LEGISLATIVE COUNCIL.

07-09-01 REPORT SENT TO AGENCY.

RNS:DD;jal;rv

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



WISCONSIN LEGISLATIVE COUNCIL

RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 01-068

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.]

2. Form, Style and Placement in Administrative Code

- a. It is suggested that consideration be given to adding s. 440.03 (1m), Stats., to the references under "statutes interpreted" in the department's analysis.
- b. It would be helpful if the department's analysis indicated the time under s. RL 4.03 for department review and determination of applications.

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

It is assumed that in s. RL 10.04 (2) (a), the new reference to an examination administered "prior to 1994" is correct even though the provision currently applies to applications made to the department on or before "April 1, 1994."

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 01-)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to repeal RL 10.04 (2) (b) (intro.); to renumber RL 10.04 (2) (b) 2.; to renumber and amend RL 10.04(2) (b) 1.; and to amend RL 10.03, 10.04 (2) (a) and the Note following RL 10.04 (3), relating to certification of optometrists to use diagnostic pharmaceutical agents.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 440.07 and 449.17, Stats.

Statutes interpreted: s. 449.17, Stats.

In this proposed rule-making order, the Department of Regulation and Licensing amends ch. RL 10, relating to the certification of optometrists to use diagnostic pharmaceutical agents.

The Note following s. RL 10.01 (1), is being amended to reflect the renumbering of ch. 161, Stats., to ch. 961, Stats.

Section RL 10.03 states, in part, that an application for a certificate shall be granted or denied within 15 business days after receipt of a completed application. The rule is being amended to omit this provision because the department has adopted a standard rule that specifies the number of business days within which the department must review and make a determination on an application. *s. 440.03 (1m), Stats., s. RL 4.03, Wis. Adm. Code.*

Section RL 10.04 (2), provides that in order to obtain a DPA certificate, an optometrist must submit evidence to the department showing that the optometrist has successfully completed one of the examinations identified in pars. (a) and (b). Depending upon when an application is filed with the department, before or after April 1, 1994, applicants must submit evidence of successful completion of the pharmacology examination administered prior to 1994 by the National Board of Examiners in Optometry; parts I and II of the examination administered after 1986 by the National Board of Examiners in Optometry; or an examination approved by the Department of Regulation and Licensing and the Optometry Examining Board. The rule is being amended to delete the references to the April 1, 1994 date because the references are no longer applicable.

TEXT OF RULE

SECTION 1. The Note following RL 10.01 (10) is amended to read:

Note: Section ~~161.39~~ 961.39, Stats., contains certain limitations relating to the prescribing and administering of controlled substances by optometrists certified under section 449.18, Stats.

SECTION 2. RL 10.03 is amended to read:

RL 10.03 Statement of approval required. A licensed optometrist may not use diagnostic pharmaceutical agents in the practice of optometry unless the optometrist has completed an application form and received a DPA certificate from the department. ~~An application for a certificate shall be granted or denied within 15 business days after receipt of a completed application.~~ A licensed optometrist may not use therapeutic pharmaceutical agents in the practice of optometry unless the optometrist has completed an application form, met the requirements under s. 449.18, Stats., and received a TPA certificate from the optometry examining board.

SECTION 3. RL 10.04 (2) (a) is amended to read:

RL 10.04 (2) (a) ~~If application was made to the department prior to or on April 1, 1994, obtained~~ Obtained a score of not less than 75 on the pharmacology section of the examination administered prior to 1994 by the national board of examiners in optometry.

SECTION 4. RL 10.04 (2) (b) (intro.) is repealed.

SECTION 5. RL 10.04 (2) (b) 1. is renumbered RL 10.04 (2) (b) and amended to read:

RL 10.04 (2) (b) Obtained passing scores on parts I and II of the examination administered after 1986 by the national board of examiners in optometry; ~~or.~~

SECTION 6. RL 10.04 (2) (b) 2. is renumbered RL 10.04 (2) (c).

SECTION 7. The Note following RL 10.04 (3) is amended to read:

Note: ~~The department of regulation and licensing does not administer the pharmacology examination.~~ The required score of "not less than 75" relates only to the pharmacology section of the national examination. Therefore, if all sections of the national examination ~~are~~ were taken at once, the 75 score minimum applies only to the pharmacology section and not to the other sections of the examination.

(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 _____

Oscar Herrera, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

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 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.

g:\rules\rl10.doc
6/11/01

OCT 01 2001

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 01-068)

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 DEPARTMENT OF REGULATION AND LICENSING is submitting in final draft form rules relating to certification of optometrists to use diagnostic pharmaceutical agents.

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.

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 01-068
DEPARTMENT OF REGULATION : (s. 227.19 (3), Stats.)
AND LICENSING :**

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:

In this proposed rule-making order, the Department of Regulation and Licensing amends ch. RL 10, relating to the certification of optometrists to use diagnostic pharmaceutical agents.

The Note following s. RL 10.01 (1), is being amended to reflect the renumbering of ch. 161, Stats., to ch. 961, Stats.

Section RL 10.03 states, in part, that an application for a certificate shall be granted or denied within 15 business days after receipt of a completed application. The rule is being amended to omit this provision because the department has adopted a standard rule that specifies the number of business days within which the department must review and make a determination on an application. *s. 440.03 (1m), Stats., s. RL 4.03, Wis. Adm. Code.* Section RL 4.03 (1) states that an authority shall review and make a determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

Section RL 10.04 (2), provides that in order to obtain a DPA certificate, an optometrist must submit evidence to the department showing that the optometrist has successfully completed one of the examinations identified in pars. (a) and (b). Depending upon when an application is filed with the department, before or after April 1, 1994, applicants must submit evidence of successful completion of the pharmacology examination administered prior to 1994 by the National Board of Examiners in Optometry; parts I and II of the

examination administered after 1986 by the National Board of Examiners in Optometry or an examination approved by the Department of Regulation and Licensing and the Optometry Examining Board. The rule is being amended to delete the references to the April 1, 1994 date because the references are no longer applicable.

V. NOTICE OF PUBLIC HEARING:

A public hearing was held on July 13, 2001. There were no appearances at the public hearing nor were any written comments received.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 5. It is assumed that in s. RL 10.04 (2) (a), the new reference to an examination administered "prior to 1994" is correct even though the provision currently applies to applications made to the department on or before "April 1, 1994."

Response: The new reference in s. RL 10.04 (2) (a), to an examination administered "prior to 1994" is correct and reflects the department's intent.

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

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

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

g:\rules\rl10leg.doc
9/28/01

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 01-068)

PROPOSED ORDER

An order of the Department of Regulation and Licensing to repeal RL 10.04 (2) (b) (intro.); to renumber RL 10.04 (2) (b) 2.; to renumber and amend RL 10.04(2) (b) 1.; and to amend RL 10.03, 10.04 (2) (a) and the Note following RL 10.04 (3), relating to certification of optometrists to use diagnostic pharmaceutical agents.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 440.07 and 449.17, Stats.

Statutes interpreted: ss. 440.03 (1m) and 449.17, Stats.

In this proposed rule-making order, the Department of Regulation and Licensing amends ch. RL 10, relating to the certification of optometrists to use diagnostic pharmaceutical agents.

The Note following s. RL 10.01 (1), is being amended to reflect the renumbering of ch. 161, Stats., to ch. 961, Stats.

Section RL 10.03 states, in part, that an application for a certificate shall be granted or denied within 15 business days after receipt of a completed application. The rule is being amended to omit this provision because the department has adopted a standard rule that specifies the number of business days within which the department must review and make a determination on an application. *s. 440.03 (1m), Stats., s. RL 4.03, Wis. Adm. Code.* Section RL 4.03 (1) states that an authority shall review and make a determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

Section RL 10.04 (2), provides that in order to obtain a DPA certificate, an optometrist must submit evidence to the department showing that the optometrist has successfully completed one of the examinations identified in pars. (a) and (b). Depending upon when an application is filed with the department, before or after April 1, 1994, applicants must submit evidence of successful completion of the pharmacology examination administered prior to 1994 by the National Board of Examiners in Optometry; parts I and II of the examination administered after 1986 by the National Board of Examiners in Optometry or an examination approved by the Department of

Regulation and Licensing and the Optometry Examining Board. The rule is being amended to delete the references to the April 1, 1994 date because the references are no longer applicable.

TEXT OF RULE

SECTION 1. The Note following RL 10.01 (10) is amended to read:

Note: Section ~~161.39~~ 961.39, Stats., contains certain limitations relating to the prescribing and administering of controlled substances by optometrists certified under section 449.18, Stats.

SECTION 2. RL 10.03 is amended to read:

RL 10.03 Statement of approval required. A licensed optometrist may not use diagnostic pharmaceutical agents in the practice of optometry unless the optometrist has completed an application form and received a DPA certificate from the department. ~~An application for a certificate shall be granted or denied within 15 business days after receipt of a completed application.~~ A licensed optometrist may not use therapeutic pharmaceutical agents in the practice of optometry unless the optometrist has completed an application form, met the requirements under s. 449.18, Stats., and received a TPA certificate from the optometry examining board.

SECTION 3. RL 10.04 (2) (a) is amended to read:

RL 10.04 (2) (a) ~~If application was made to the department prior to or on April 1, 1994, obtained~~ Obtained a score of not less than 75 on the pharmacology section of the examination administered prior to 1994 by the national board of examiners in optometry.

SECTION 4. RL 10.04 (2) (b) (intro.) is repealed.

SECTION 5. RL 10.04 (2) (b) 1. is renumbered RL 10.04 (2) (b) and amended to read:

RL 10.04 (2) (b) Obtained passing scores on parts I and II of the examination administered after 1986 by the national board of examiners in optometry; ~~or.~~

SECTION 6. RL 10.04 (2) (b) 2. is renumbered RL 10.04 (2) (c).

SECTION 7. The Note following RL 10.04 (3) is amended to read:

Note: ~~The department of regulation and licensing does not administer the pharmacology examination.~~ The required score of "not less than 75" relates only to the pharmacology section of the national examination. Therefore, if all sections of the national examination ~~are~~ were taken

at once, the 75 score minimum applies only to the pharmacology section and not to the other sections of the examination.

(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 _____

Oscar Herrera, Secretary
Department of Regulation and Licensing

FISCAL ESTIMATE

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.

g:\rules\rl10.doc
9/28/01