

**Jim Doyle**  
Governor

**WISCONSIN DEPARTMENT OF  
REGULATION & LICENSING**

04-002 14?

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PO Box 8935  
Madison WI 53708-8935

**Donsia Strong Hill**  
Secretary



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March 29, 2004

LETTER OF TRANSMITTAL

TO: Senate Chief Clerk  
Attention: Donald J. Schneider  
17 West Main Street, Room 401  
Risser Justice Building  
Madison, Wisconsin 53702

FROM: Pamela Haack, Paralegal  
Department of Regulation and Licensing  
Office of Administrative Rules  
1400 East Washington Avenue, Room 171  
Madison, Wisconsin 53702

The attached rule jacket containing a report to the legislative standing committee is being submitted for delivery to the President of the Senate pursuant to section 227.19 (4) (b) 4., Stats.

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 me at 266-0495.

Thank you.

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04-002

**STATE OF WISCONSIN  
PHARMACY EXAMINING BOARD**

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**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : PHARMACY EXAMINING BOARD  
PHARMACY EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 04-002)**

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TO: Alan J. Lasee  
President of the Senate  
Room 219 South, State Capitol  
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the PHARMACY EXAMINING BOARD is submitting in final draft form rules relating to the practical examination, NAPLEX and the multi-state pharmacy jurisprudence examination.

If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

**STATE OF WISCONSIN  
PHARMACY EXAMINING BOARD**

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**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE  
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 04-002  
PHARMACY EXAMINING BOARD : (s. 227.19 (3), Stats.)**

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**I. THE PROPOSED RULE:**

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

**II. REFERENCE TO APPLICABLE FORMS:**

A minor revision will be required on form #1302 by this rule.

**III. FISCAL ESTIMATES:**

The Department of Regulation and Licensing will incur \$500 in costs to print and distribute the rule change.

**IV. STATEMENT EXPLAINING NEED:**

Current s. Phar 2.03 (4) allows an applicant to be admitted to the practical examination, NAPLEX examination or multi-state pharmacy jurisprudence examination if the applicant is within 360 credit hours of completing an internship in the practice of pharmacy (for applicants certified by the foreign pharmacy graduate examination committee) or 60 days before graduation from a school or college of pharmacy approved by the board. In certain instances with other state pharmacy examining boards, this rule may penalize applicants who wish to later transfer scores. This is because other state pharmacy examining boards may not accept examination score transfers if the examinations are taken prior to graduation.

This modification will not allow an applicant to be admitted to the practical examination, NAPLEX examination or 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 where necessary or graduating from a school or college of pharmacy approved by the board.

**V. NOTICE OF PUBLIC HEARING AND SUMMARY OF PUBLIC COMMENTS:**

A public hearing was held on February 11, 2004. There were no appearances at the public hearing nor were any written comments received.

**VI. CHANGES TO ANALYSIS PREPARED UNDER s. 227.14(2) OR THE FISCAL ESTIMATE PREPARED UNDER S. 227.14(4):**

The analysis was modified as follows to comply with recently enacted 2003 Wis. Act 118:

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 440.07 (2) (a), 450.03 (2) and 450.04 (2) and (3), Stats.

Explanation of agency's authority to promulgate the proposed rule under, ss. 15.08 (5) (b), 227.11 (2), 440.07 (2) (a), 450.03 (2) and 450.04 (2) and (3), Stats.:

The authorizing statutes grant to the Wisconsin Pharmacy Examining Board the authority to determine procedures to be used by applicants desiring to take examinations required for licensure.

Statutes interpreted: ss. 15.08 (5) (b), 227.11 (2), 440.07 (2) (a), 450.03 (2) and 450.04 (2) and (3), Stats.

Brief summary of proposed rule:

Current s. Phar 2.03 (4) allows an applicant to be admitted to the practical examination, NAPLEX examination or multi-state pharmacy jurisprudence examination if the applicant is within 360 credit hours of completing an internship in the practice of pharmacy (for applicants certified by the foreign pharmacy graduate examination committee) or 60 days before graduation from a school or college of pharmacy approved by the board. In certain instances with other state pharmacy examining boards, this rule may penalize applicants who wish to later transfer scores. This is because other state pharmacy examining boards may not accept examination score transfers if the examinations are taken prior to graduation.

This modification will not allow an applicant to be admitted to the practical examination, NAPLEX examination or 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 where necessary or graduating from a school or college of pharmacy approved by the board.

Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None applicable.

A comparison of similar rules in adjacent states:

Illinois Rules- Section 1330.40. At least 30 days prior to taking required examinations, graduation from a pharmacy school approved by the board, or for foreign

graduates, evidence of passing the Foreign Pharmacy Graduate Equivalency Examination and the Test of English as a Foreign Language and Test of Spoken English.

Iowa- 657 IAC 2.2(1), 2.5(155A), 2.10(155A). At the time of application, evidence of graduation from a recognized college of pharmacy or for foreign graduates, certification by the Foreign Pharmacy Graduate Equivalency Commission (FPGEC).

Michigan- R. 338.474 Rule 4. (1)(a) Applicant must have completed the requirements for a degree in pharmacy from a program of pharmacy education approved by the board.

Minnesota- Chapter 6800.1250, Subpart 1. Requires an applicant to submit evidence of having graduated from a pharmacy school approved by the board, at least 45 days prior to taking an examination. Before taking the licensing examination, a foreign graduate must pass the Foreign Pharmacy Graduate Equivalency Examination and the Test of English as a Foreign Language.

Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The proposed rule is in response to an April 8, 2003 memorandum by the National Association of Boards of Pharmacy, (NABP) to the executive officers of all state boards of pharmacy regarding current Phar 2.03 (4). The memorandum implies that current Phar 2.03 (4) is not in compliance with the letters of agreement between the state boards and NABP for two examinations, NAPLEX and MPJE. While current Phar 2.03 (4) is in compliance with the letters of agreement, the proposed rule is designed to amend the wording of Phar 2.03 (4) such that Wisconsin pharmacy graduates who later attempt to transfer test scores to other jurisdictions will not be hindered by another jurisdiction's possible contention that the test scores are based upon examinations taken in a manner not in compliance with the NABP letters of agreement.

Analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small business under s. 227.114:

None.

## **VII. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

Comment 5.d.- No. There is no need for a transition of initial applicability provision for the proposed revision.

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

### **VIII. FINAL REGULATORY FLEXIBILITY ANALYSIS:**

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

Phar 2.03(4) CR04-002 (Admission to exams) Leg Report 03-29-04

STATE OF WISCONSIN  
PHARMACY EXAMINING BOARD

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IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : PHARMACY EXAMINING BOARD  
PHARMACY EXAMINING BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 04-002)

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PROPOSED ORDER

An order of the Pharmacy Examining Board to amend Phar 2.03 (4), relating to the practical examination, NAPLEX and the multi-state pharmacy jurisprudence examination.

Analysis prepared by the Department of Regulation and Licensing.

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ANALYSIS

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 440.07 (2) (a), 450.03 (2) and 450.04 (2) and (3), Stats.

Explanation of agency's authority to promulgate the proposed rule under ss. 15.08 (5) (b), 227.11 (2), 440.07 (2) (a), 450.03 (2) and 450.04 (2) and (3), Stats.

The authorizing statutes grant to the Wisconsin Pharmacy Examining Board the authority to determine procedures to be used by applicants desiring to take examinations required for licensure.

Statutes interpreted: ss. 15.08 (5) (b), 227.11 (2), 440.07 (2) (a), 450.03 (2) and 450.04 (2) and (3), Stats.

Current s. Phar 2.03 (4) allows an applicant to be admitted to the practical examination, NAPLEX examination or multi-state pharmacy jurisprudence examination if the applicant is within 360 credit hours of completing an internship in the practice of pharmacy (for applicants certified by the foreign pharmacy graduate examination committee) or 60 days before graduation from a school or college of pharmacy approved by the board. In certain instances with other state pharmacy examining boards, this rule may penalize applicants who wish to later transfer scores. This is because other state pharmacy examining boards may not accept examination score transfers if the examinations are taken prior to graduation.

This modification will not allow an applicant to be admitted to the practical examination, NAPLEX examination or 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 where necessary or graduating from a school or college of pharmacy approved by the board.

Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None applicable.

A comparison of similar rules in adjacent states:

Illinois Rules – Section 1330.40. At least 30 days prior to taking required examinations, graduation from a pharmacy school approved by the board, or for foreign graduates, evidence of passing the Foreign Pharmacy Graduate Equivalency Examination and the Test of English as a Foreign Language and Test of Spoken English.

Iowa – 657 IAC 2.2(1), 2.5(155A), 2.10(155A). At the time of application, evidence of graduation from a recognized college of pharmacy or for foreign graduates, certification by the Foreign Pharmacy Graduate Equivalency Commission (FPGEC).

Michigan – R. 338.474 Rule 4. (1)(a). Applicant must have completed the requirements for a degree in pharmacy from a program of pharmacy education approved by the board.

Minnesota – Chapter 6800.1250, Subpart 1. Requires an applicant to submit evidence of having graduated from a pharmacy school approved by the board, at least 45 days prior to taking an examination. Before taking the licensing examination, a foreign graduate must pass the Foreign Pharmacy Graduate Equivalency Examination and the Test of English as a Foreign Language.

Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The proposed rule is in response to an April 8, 2003 memorandum by the National Association of Boards of Pharmacy (NABP) to the executive office of all state boards of pharmacy regarding current s. Phar 2.03 (4). The memorandum implies that current s. Phar 2.03 (4) is not in compliance with the letters of agreement between the state boards and NABP for two examinations, NAPLEX and MPJE. While current s. Phar 2.03 (4) is in compliance with the letters of agreement, the proposed rule is designed to amend the wording of s. Phar 2.03 such that Wisconsin pharmacy graduates who later attempt to transfer test scores to other jurisdictions will not be hindered by another jurisdiction's possible contention that the test scores are based upon examinations taken in a manner not in compliance with the NABP letters of agreement.

Analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small business under s. 227.114, Stats.:

None.

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TEXT OF RULE

SECTION 1. Phar 2.03 (4) is amended to read:

Phar 2.03 (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 ~~obtaining certification by the foreign pharmacy graduate examination committee and being either within 360 credit hours or completing an internship in the practice of pharmacy or 60 days before~~ and either obtaining certification by the foreign pharmacy graduate examination committee or graduating from a school or college of pharmacy approved by the board.

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(END OF TEXT OF RULE)  
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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

FISCAL ESTIMATE

The Department of Regulation and Licensing will incur \$500 in costs for staff to print and distribute the rule change.

FINAL REGULATORY FLEXIBILITY ANALYSIS

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

Phar 2.03(4) CR04-002 (Admission to Exams) Final to Leg 03-29-04



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**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 04-002

AN ORDER to amend Phar 2.03 (4), relating to the practical examination, NAPLEX and the multi-state pharmacy jurisprudence examination.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

01-12-2004 RECEIVED BY LEGISLATIVE COUNCIL.

02-09-2004 REPORT SENT TO AGENCY.

RNS:DD

**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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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Ronald Sklansky  
*Clearinghouse Director*

Terry C. Anderson  
*Legislative Council Director*

Richard Sweet  
*Clearinghouse Assistant Director*

Laura D. Rose  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 04-002

#### 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 October 2002.]**

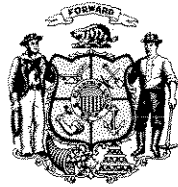
#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the first paragraph of the department's analysis, reference to "board" in the last sentence should be in the plural. Consideration should be given to furnishing a short explanation in the analysis why the current rule "may penalize applicants who wish to later transfer scores."

b. In the second paragraph of the department's analysis, the last reference to "graduate" should be revised to "graduating."

c. In the text of the proposed rule, the current reference to "graduation" should be stricken and replaced by "graduating".

d. Is there a need for a transition of initial applicability provision for the proposed revision?



**Carol Roessler**  
STATE SENATOR

April 2, 2004

To: Members of the Senate Committee on Health, Children, Families, Aging and Long Term Care.

From: Senator Carol Roessler, Chair

Re: Clearinghouse Rule 04-002 relating to the practical examination, NAPLEX and the multi-state pharmacy jurisprudence examination.

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CR 04-002 has been referred to the Senate Committee on Health, Children, Families, Aging and Long Term Care Committee. Current s. Phar 2.03 (4) allows an applicant to be admitted to the practical examination, NAPLEX examination, or multi-state pharmacy jurisprudence examination if the applicant is within 360 credit hours of completing an internship in the practice of pharmacy or 60 days before graduation from a school or college of pharmacy approved by the board. In certain instances with other state pharmacy examining boards, this rule may penalize applicants who wish to transfer scores. This is because other state pharmacy examining boards may not accept examination score transfers if the examinations are taken prior to graduation.

If you would like the Committee to hold a hearing on CR 04-002, please contact Jennifer Halbur in my office at 266-5300 by Wednesday April 14<sup>th</sup>.

## Halbur, Jennifer

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**From:** Tom Engels [tome@pswi.org]  
**Sent:** Wednesday, April 21, 2004 9:16 AM  
**To:** 'Halbur, Jennifer'  
**Subject:** RE: Clearinghouse Rule 04-002

Hi Jennifer,

Yes, we are alright with this rule.

It reverses a rule that was adopted by the PEB a few years ago to allow pharmacy students, who have completed their course work and are awaiting graduation to take the exam early. However, the National Association of Boards of Pharmacy (NABP) who administers the exam will not allow students to take the exam until after graduation.

The Department of Regulation and Licensing has a contract with NABP for this exam and the current rule violates the exam date provision of that contract.

Sorry for the long explanation.

Tom Engels  
Vice President of Public Affairs  
Pharmacy Society of Wisconsin  
(608) 827-9200 (office)  
(608) 827-9292 (fax)  
(608) 576-2662 (cell)  
tome@pswi.org

-----Original Message-----

**From:** Halbur, Jennifer [mailto:Jennifer.Halbur@legis.state.wi.us]  
**Sent:** Tuesday, April 20, 2004 1:51 PM  
**To:** 'tome@pswi.org'  
**Subject:** Clearinghouse Rule 04-002

Tom,

Is the Pharmacy Society okay with CR 04-002 relating to the practical examination, NAPLEX and the multi state pharmacy jurisprudence examination?

This rule is currently in the Senate Health Committee and will be under the Committee's jurisdiction until April 30th.

Thanks,  
Jennifer