

Clearinghouse Rule 07-099

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 07-)

PROPOSED ORDER

An order of the Pharmacy Examining Board to repeal Phar 7.015 (3) (d); and to create Phar 7.015 (2) (q), relating to the transfer of a prescription drug by a pharmacy technician.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 450.02 (3) (a), (b), (d) and (e), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a), (b), (d) and (e), Stats.

Explanation of agency authority:

The Wisconsin Pharmacy Examining Board is granted the authority to protect the public health, safety and welfare by establishing minimum standards for the practice of pharmacy, which includes the practice activities for a pharmacist and for a pharmacy technician.

Related statutes or rule:

Section Phar 7.015.

Plain language analysis:

Chapter Phar 7 defines mandatory and permissible pharmacy practice activities for a pharmacist and for a pharmacy technician. The proposed rule change would amend provisions of the current rule that relate to when and how a technician may transfer a prescription to a patient or agent of a patient.

Rules of the Pharmacy Examining Board identify in s. Phar 7.015 that pharmacy technicians may be assigned by a pharmacist certain tasks relating to receiving prescriptions and preparing and dispensing drugs. The proposed modification will clarify that a pharmacy technician may permissibly transfer a prescription order to a patient or an agent of the patient if the pharmacist has first provided a patient consultation.

SECTION 1 creates a provision allowing a pharmacy technician to transfer a prescription order to a patient or an agent of the patient if a pharmacist has first provided a patient consultation.

SECTION 2 repeals a provision prohibiting a pharmacy technician from transferring a prescription order to a patient or an agent of the patient.

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

There is no existing or proposed federal regulation for summary and comparison.

Comparison with rules in adjacent states:

Iowa:

Rules: Although not explicitly addressed, by implication the transfer of prescriptions to patients is allowed as a delegated act by the pharmacist when the pharmacist is present in the pharmacy. Iowa Admin. Code r. 657-3.21, requires the pharmacist to be on site when delegating to technicians. Iowa Admin. Code r. 657-3.23, prohibits a technician from counseling but not from transferring the prescription. Iowa Admin. Code r. 657-3.22, the transfer of the prescription is not included in a list of technical functions a technician may perform, but the list is not exhaustive. Iowa Admin. Code r. 657-6.7(3), prohibits non technical dispensing activities in the absence of the pharmacist.

Illinois:

Rules: Ill. Admin. Code tit. 68 § 1330.80, requires a pharmacist to be present when a prescription is distributed to the ultimate consumer. By implication a prescription transfer may occur from the technician to a patient as a non discretionary act.

Michigan:

Rules: Mich. Admin. Code r. 338.490(5), outlines what a pharmacist shall do in delegating without specifying what can or cannot be delegated. Written procedures must be provided to the delegate. By implication the transfer of prescriptions to patients by technicians is allowed as a delegated act by the pharmacist.

Minnesota:

Rules: Minn R. 6800.3100, does not include transfer in the list of what shall be done by the pharmacist. Minn R. 6800.3850, allows technicians to perform technician functions that do not involve professional pharmaceutical judgment. Technician tasks must be included as part of a pharmacy's written procedures. By implication a prescription transfer may occur from the technician to a patient as a non discretionary act.

Summary of factual data and analytical methodologies:

The Pharmacy Examining Board has been made aware from reports from the profession and from investigations undertaken by the Department of Regulation and Licensing's Division of Enforcement, that in certain circumstances pharmacy technicians have been physically handing a prescription order to the patient and concluding the sale of the prescription order to the patient, after a pharmacist has provided a patient consultation to the patient or agent of the patient. The strict reading of s. Phar 7.015 (3) (d) prohibits the pharmacy technician from transferring a prescription order under any circumstances. The board is therefore aware of the need to clarify this rule provision to clearly state that such a transfer of the prescription to the patient or agent of the patient is permissible provided that the pharmacist has first provided a patient consultation. Adjacent states allow the practice.

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

The board discussed the anticipated effect on pharmacies and decided that delegating the actual transfer without delegating the consultation would result in greater efficiencies for pharmacies. Some small businesses may benefit from the marginal increase in pharmacist availability for other tasks.

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 proposed rules 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 53708-8935. Telephone: (608) 266-0495. Email: 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, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before December 7, 2007 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Phar 7.015 (2) (q) is created to read:

Phar 7.015 (2) (q) Transferring the prescription to the patient or agent of the patient, provided that the pharmacist has first provided a patient consultation.

SECTION 2. Phar 7.015 (3) (d) 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 7.015(2)(q) CR07- (Transfer by technicians) Draft to CH 10-18-07