

Clearinghouse Rule 13-076

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)

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PROPOSED ORDER

An order of the Pharmacy Examining Board to repeal 7.04(1)(e)2.(note) and amend Phar 7.04 (1)(e) 2. relating to return or exchange of health items.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

Statutes interpreted: ss. 450.01 (7), 450.02 (3)

Statutory authority: ss. 15.08 (5) (b) and 450.02 (3), Wis. Stats.

Explanation of agency authority:

15.08 (5) (b), Stats., allows each examining board to “promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

450.02(3), Stats., allows the Pharmacy Examining Board to promulgate rules relating to the manufacture of drugs and the distribution and dispensing of prescription drugs; establish security standards for pharmacies and the manufacture, distribution and dispensing of hypodermic syringes, needles and other objects used, intended for use or designed for use in injecting a drug.

Related statute or rule: ss. 938.02

Plain language analysis:

Section 1 updates the language in the rule to reflect the statutory changes in the language and citations resulting from 2005 Wisconsin Act 344. “Secured correctional facility” was

changed to “juvenile correctional facility” and “secure detention facility” was changed to “juvenile detention facility.” As a result of these changes the statutory citations were amended to reflect their new position in the alphabet in § 938.02, Wis. Stats. In addition, 2005 Wisconsin Act 344 repealed § 938.02(15p).

Section 2 repeals the note which followed Phar 7.04(1)(e)2. advising the public of the changes. The note is no longer necessary due to the updating of this rule.

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

None

Comparison with rules in adjacent states:

Illinois: In Illinois’s section relating to the return of drugs, it does not address correction facilities separately.

Iowa: In Iowa’s section relating to the return or exchange of health items, it does not address correction facilities separately.

Michigan: In Michigan’s section relating to return or exchange of health items, there is a definition for “state correctional facility” which means a facility or institution that houses a prisoner population under the jurisdiction of the department of corrections.

Minnesota: In Minnesota’s section relating to return of drugs and devices, such a return is only allowed by hospitals, nursing homes and assisted living facilities.

Summary of factual data and analytical methodologies:

On June 26, 2012, the Governor’s Office recommended that the Pharmacy Examining Board review and update this rule to reflect current statutes.

Currently there is a note indicating the changes. This rule moves the updates from the note into the rule itself to reflect the statutory language change.

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

This rule was posted for economic comments for 14 days and none were received. This rule corrects statutory references only and has no economic impact.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed 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 Greg.Gasper@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Sharon.Henes@wisconsin.gov, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Sharon.Henes@wisconsin.gov. Comments must be received at or before the hearing on October 30, 2013 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Phar 7.04(1)(e)2. is amended to read:

Phar 7.04(1)(e)2. A juvenile patient who resides in a ~~secured juvenile~~ correctional facility, as defined in s. ~~938.02(15m)~~, 938.02(10p) Stats.; a secured child caring institution, as defined in s. 938.02(15g), Stats.; ~~a secured group home, as defined in s. 938.02(15p), Stats.;~~ a ~~secured juvenile~~ detention facility, as defined in s. ~~938.02(16)~~, 938.02(10r) Stats.; or a juvenile portion of a county jail whose dispensed health items are maintained under the custody and control of the health services staff as defined in s. DOC 316.02(6) and provided to a juvenile patient under the provisions of s. DOC 316.03.

SECTION 2. Phar 7.04(1)(3)2.(note) is repealed.

SECTION 3. 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)

Dated _____

Agency _____

Member of the Board
Pharmacy Examining Board