

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD	:	ADOPTING EMERGENCY RULES
	:	

The statement of scope for this rule, SS 075-14 was approved by the Governor on July 28, 2014 published in Register No. 704 on August 14, 2014, and approved by Medical Examining Board on August 26, 2014. This emergency rule was approved by the Governor on January 15, 2015.

ORDER

An order of the Medical Examining Board to amend Med 3 (title), 3.01, 3.02, 3.04, 3.06, Med 5 (title), 5.01, 5.02, 5.04, and 5.05; to repeal and recreate Med 1.02 (3), 3.05 and 5.06; and to create Med 23 relating to physician licensure.

Analysis prepared by the Department of Safety and Professional Services.

EXEMPTION FROM FINDING OF EMERGENCY

The Legislature by SECTION 39 in 2013 Wisconsin Act 240 provides an exemption from a finding of emergency for the adoption of the rule.

ANALYSIS

Statutes interpreted:

448.04 (1) and 448.05 (2), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 448.40 (1), Stats., and 2013 Wisconsin Act 240

Explanation of agency authority:

Sections 15.08 (5) (b) and 227.11 (2) (a), Stats., provide general authority from the legislature to the Medical Examining Board (Board) to promulgate rules that will provide guidance within the profession and interpret the statutes it administers. Section 448.40 (1), Stats., allows the Board to draft rules that will carry out the purposes of ch. 448, Stats. With the passage of 2013 Wisconsin Act 240, the legislature granted specific rule-

making authority to the Board to draft rules to address the new physician licensure classifications created by the Act.

Related statute or rule:

Wis. Admin. Code ch. Med 1, 3, and 5

Plain language analysis:

The proposed rule addresses the changes instituted by the passage of 2013 Wisconsin Act 240 regarding physician licensure. The Act changed the postgraduate training requirement for all applicants seeking physician licensure from 12 months to 24 months. Both U.S. and foreign trained medical school graduates must complete 24 months of postgraduate training or must be currently enrolled and have successfully completed 12 months of a postgraduate training program, and have an unrestricted endorsement from the postgraduate training director that the applicant is expected to complete at least 24 months of postgraduate training.

Act 240, repealed the visiting professor license and created the restricted license to practice medicine and surgery as a visiting physician. The visiting physician license is open to any physician licensed outside of Wisconsin who is invited to serve on the academic staff of a medical school in this state. The visiting physician license holder must restrict their practice to the education facility, research facility or medical college where the license holder is teaching, researching, or practicing medicine and surgery. The license is valid for one year and remains valid as long as the license holder is actively engaged in teaching, researching, or practicing medicine and surgery and is lawfully entitled to work in the U.S.

The temporary educational permit to practice medicine and surgery was also repealed and replaced with the resident educational license to practice medicine and surgery (REL). The REL allows the license holder to pursue their postgraduate training under the direction of a Wisconsin licensed physician. REL holders must restrict their practice to the postgraduate training program in which they are being trained. The REL is valid for one year and may be renewed for additional one year terms as long as the license holder is enrolled in their postgraduate training program.

Act 240 also created the administrative physician license. The administrative physician license allows the license holder to pursue administrative or professional managerial functions but does not allow the license holder to treat patients. The administrative physician license holder must comply with all of the same application requirements as a regular license to practice medicine and surgery.

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

None.

Comparison with rules in adjacent states:

Illinois: Illinois requires 1 year of postgraduate clinical training for both US and Foreign graduates. 225 ILCS 60/11.

Visiting Professor Permit This permit holder maintains a license to practice medicine in his or her native licensing jurisdiction during the period of the visiting professor permit and receives a faculty appointment to teach in a medical, osteopathic or chiropractic school in Illinois. A visiting professor permit is valid for 2 years from the date of its issuance or until the faculty appointment is terminated, whichever occurs first. 225 ILCS 60/18 (A.)

Visiting physician permit This permit is granted to persons who have received an invitation or appointment to study, demonstrate or perform a specific medical, osteopathic, chiropractic or clinical subject or technique in a medical, osteopathic, or chiropractic school, a state or national medical, osteopathic, or chiropractic professional association or society conference or meeting, or a hospital licensed under the Hospital Licensing Act, a hospital organized under the University of Illinois Hospital Act, or a facility operated pursuant to the Ambulatory Surgical Treatment Center Act. The permit is valid for 180 days from the date of issuance or until the completion of the clinical studies or conference has concluded, whichever occurs first. 225 ILCS 60/18 (B)

Visiting resident permit is a credential that is issued to candidates who maintain an equivalent credential in his or her native licensing jurisdiction during the period of the temporary visiting resident permit. The permit holder must be enrolled in a postgraduate clinical training program outside the state of Illinois and must have been invited or appointed for a specific time period to perform a portion of that postgraduate clinical training program under the supervision of an Illinois licensed physician in an Illinois patient care clinic or facility that is affiliated with the out-of-state post graduate training program. 225 ILCS 60/18 (C).

Iowa: Iowa requires one year of residency training in a hospital-affiliated program approved by the board, graduates of international medical schools must complete 24 months of graduate training. 653 IAC 9.3.

Resident physician license allows the resident physician to practice under the supervision of a licensed practitioner in a board-approved resident training program in Iowa. The resident physician license is required of any resident physician enrolled in a resident training program and practicing in Iowa and can only remain active as long as the resident physician practices in the program designated in his or her application. If the resident physician leaves that program, the license immediately becomes inactive. 653 IAC 10.03 (1).

Special licensure is granted to physicians who are academic staff members of a college of medicine or osteopathic medicine if that physician does not meet the qualifications for permanent licensure but is held in high esteem for unique contributions that have been

made to medicine. This class of licensure is renewed by the board on a case-by-case basis, and specifically limits the license to practice at the medical college and at any health care facility affiliated with the medical college. 653 IAC 10.4.

The Iowa Board did not have a comparable administrative physician license.

Michigan: Michigan requires graduates of schools located in the U.S. and its territories to complete 2 years of postgraduate clinical training. Mich. Admin. Code R. 338.2317. Foreign medical school graduates are required to complete 2 years of postgraduate clinical training in a program approved by the board, or in a board approved hospital or institution. Mich. Admin. Code R. 338.2316 (4) (a).

Clinical academic limited license is a class of licensure which is granted to candidates who have graduated from medical school and have been appointed to a teaching or research position in an academic institution. Mich. Admin. Code R. 338.2327a. This license holder must practice only for an academic institution and under the supervision of one or more physicians fully licensed in Michigan. This class of license is renewable on an annual basis but not past 5 years. MCLS §333.17030.

Educational limited license This class of licensure authorizes the license holder to engage in the practice of medicine as part of a postgraduate educational training program. This license is granted to applicants who have graduated or who expect to graduate within the following 3 months from a medical school approved by the board and that the applicant has been admitted to a training program approved by the board. Foreign trained applicants must verify that they have completed a degree in medicine, have been admitted to a board approved training program and have passed an examination in the basic and clinical medical sciences conducted by the educational commission for foreign medical graduates. Mich. Admin. Code R. 338.2329a.

Michigan does not have a comparable administrative physician license.

Minnesota: Minnesota requires U.S. or Canadian medical school graduates to complete 1 year of graduate clinical medical training. Minn. Stat. § 147.02 (d). Foreign medical school graduates must complete 2 years of graduate clinical medical training. Minn. Stat §147.037 (d).

Residency permit A person must have a residency permit to participate in residency program in Minnesota. If a resident permit holder changes their residency program, that person must notify the board in writing no later than 30 days after termination of participation in the residency program. A separate residency permit is required for each residency program until a license is obtained. Minn. Stat. §147.0391.

Minnesota exempts from licensure physicians that are employed in a scientific, sanitary, or teaching capacity by the state university, the Department of Education, a public or private school, college, or other bona fide educational institution, or nonprofit organizations operated primarily for the purpose of conducting scientific research

directed towards discovering the causes of and cures for human diseases. Minn. Stat. §147.09 (6).

Minnesota does not have a comparable administrative physician license.

Summary of factual data and analytical methodologies:

The methodologies used in drafting the proposed rules include reviewing 2013 Wisconsin Act 240 and obtaining feedback from members of the Medical Examining Board.

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

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 Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Fiscal Estimate:

The Department finds that this rule will have a fiscal effect resulting in a one-time anticipated cost of approximately \$38,600. The Department will attempt to absorb this cost within the existing budget.

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 Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Shancethea Leatherwood, 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 608-261-4438; email at Shancethea.L Leatherwood@wisconsin.gov.

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

Comments may be submitted to Shancethea Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov.

TEXT OF RULE

SECTION 1. Med 1.02 (3) is repealed and recreated to read:

Med 1.02 (3) (a) A verified certificate showing 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 provide 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 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 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 or a successor organization; or provide 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 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 medical school 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 documentary evidence illustrating substantially equivalent education and training. The board will review the documentary evidence 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 documentary evidence 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.

(d) The board approves of the following facilities and training programs to include, the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, the Liaison Committee on Medical Education, and the National Joint Committee on Approval of Pre-Registration of Physician Training Programs of Canada, or their successor organizations.

SECTION 2. Med 3 (title) is amended to read:

CHAPTER MED 3

VISITING PROFESSOR PHYSICIAN LICENSE

SECTION 3. Med 3.01 and 3.02 are amended to read:

Med 3.01 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 (2) (a) and 448.40, Stats., and govern application for ~~a temporary license to practice medicine and surgery under s. 448.04 (1) (b) 2., Stats.,~~ restricted license to practice medicine and surgery as a visiting physician under 448.04 (1) (bg), Stats., (hereinafter “visiting professor physician license”), and also govern practice thereunder.

Med 3.02 Applications, credentials, and eligibility. An applicant who is a graduate of a ~~foreign~~ foreign medical school ~~located outside of the United States or Canada~~ located outside of the United States or Canada or an osteopathic college that is approved by the board and who is invited to serve on the academic staff of a medical school in this state as a visiting professor physician may apply to the board for a ~~temporary visiting professor license~~ visiting physician license and shall submit to the board all of the following:

(1) ~~A completed and verified application for this purpose as required in s. Med 1.02 (1), which includes proof that the applicant has graduated from and possesses a diploma from a medical or osteopathic college that is approved by the board.~~

(1m) Documentary evidence of licensure to practice medicine and surgery.

(2) ~~A signed letter from the appointing authority president or dean of a medical school, facility, or college in this state indicating that the applicant has been invited to serve on the academic staff of such medical school as a visiting professor intends to teach, research, or practice medicine and surgery at a medical education facility, medical research facility or medical college in this state.~~

(3) ~~A curriculum vitae setting out the applicant's education and qualifications and a verified photographic copy of the diploma (with translation) conferring the degree of doctor of medicine granted to the applicant by such school.~~

~~(4) A photograph of the applicant as required in s. Med 1.02 (4).~~

(5) A verified statement that the applicant is familiar with the state health laws and the rules of the department of health services as related to communicable diseases.

~~(6) Documentary evidence of noteworthy attainment in a specialized field of medicine.~~

(7) ~~Documentary evidence of post-graduate~~ postgraduate training completed in the United States ~~and/or~~ or foreign countries.

(8) Oral interview conducted ~~by~~ at the discretion of the board.

(9) Documentary evidence that the applicant teaches medicine, engages in medical research, or practices medicine and surgery outside of Wisconsin.

SECTION 4. Med 3.04 is amended to read:

Med 3.04 Practice limitations. The holder of a ~~temporary~~ visiting ~~professor~~ physician license may practice medicine and surgery as defined in s. 448.01 (9), Stats., providing such practice is ~~full-time and is~~ entirely limited to the medical education facility, medical research facility, or the medical college where the license holder is teaching, researching, or practicing medicine and surgery and only within the terms and restrictions established by the board. ~~the duties of the academic position to which the holder of such license is appointed.~~

SECTION 5. Med 3.05 is repealed and recreated to read:

Med 3.05 Expiration and renewal. A visiting physician license is valid for one year and remains valid only while the license holder is actively engaged in teaching, researching, or practicing medicine and surgery and is lawfully entitled to work in the United States. The visiting physician license may be renewed at the discretion of the board.

SECTION 6. Med 3.06 is amended to read:

Med 3.06 Examination and interview. Applicants shall ~~participate in an oral interview conducted by the board, and shall~~ complete an open book examination on statutes and rules governing the practice of medicine and surgery in Wisconsin.

SECTION 7. Med 5 (title) is amended to read:

CHAPTER MED 5

TEMPORARY EDUCATIONAL PERMIT RESIDENT EDUCATIONAL LICENSE TO PRACTICE MEDICINE AND SURGERY

SECTION 8. Med 5.01 and 5.02 are amended to read:

Med 5.01 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 and 448.40, Stats., and govern application for ~~temporary educational permit~~ the resident educational license to practice medicine and surgery under ~~s. 448.04 (1) (c), Stats.,~~ s. 448.04 (1) (bm), Stats., (hereinafter "temporary resident educational permit license"), and also govern practice thereunder.

Med 5.02 Applications, credentials, and eligibility. An applicant who has been ~~appointed to~~ accepted into a postgraduate training program in a facility in this state approved by the board under the provisions of s. Med 1.02 (3), and accredited by the

Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or a successor organization may apply to the board for a ~~temporary educational permit~~ resident educational license to practice medicine and surgery and shall submit to the board all of the following:

(1) ~~A completed and verified application supplied by the board for this purpose. These application forms are furnished by the board to the directors of training programs in approved facilities in this state and are available to the applicant from such directors.~~

(1m) Documentary evidence that the applicant is a graduate of and possesses a diploma from a medical or osteopathic school approved by the board.

~~(2) The documentary~~ Documentary evidence and credentials required under s. Med 1.02 (2), (4) and (5) the applicant has been accepted into a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or a successor organization.

(3) A signed letter from the president or dean of the institution sponsoring the postgraduate training program into which the applicant has been accepted confirming that the applicant has been or will be accepted into a postgraduate training program.

(4) A verified statement that the applicant is familiar with the state health laws and rules of the department of health services as related to communicable diseases.

SECTION 9. Med 5.04 and 5.05 are amended to read:

Med 5.04 Practice limitations. ~~The holder of a temporary educational permit to practice medicine and surgery~~ resident educational license may, under the direction of a person licensed to practice medicine and surgery in this state, perform services requisite to the postgraduate training program in which ~~that holder~~ the licensee is serving. Acting under such direction, ~~the holder of such temporary educational permit~~ the resident educational licensee shall also have the right to prescribe drugs ~~other than narcotics and controlled substances~~ and to sign any certificates, reports or other papers for the use of public authorities which are required of or permitted to persons licensed to practice medicine and surgery. ~~The holder of such temporary educational permit~~ resident educational licensee shall confine his or her training and entire practice to the ~~facility~~ postgraduate training program in which ~~the permit holder~~ the resident educational licensee is taking the training ~~and to the duties of such training.~~

Med 5.05 Revocation. Violation by the holder of a ~~temporary educational permit~~ a resident educational license to practice medicine and surgery of any of the provisions of this chapter or of any of the provisions of the Wisconsin Administrative Code or of ch. 448, Stats., which apply to persons licensed to practice medicine and surgery shall be cause for the revocation of such ~~temporary educational permit~~ resident educational license.

SECTION 10. Med 5.06 is repealed and recreated to read:

Med 5.06 Expiration and renewal. A resident educational license to practice medicine and surgery granted under this chapter is valid for one year and may be renewed for additional one-year terms as long as the license holder is enrolled in their postgraduate training program.

SECTION 11. Ch. Med 23 is created to read:

CHAPTER MED 23

ADMINISTRATIVE PHYSICIAN LICENSE

Med 23.01 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, and 448.40, Stats., and govern application for licensure as an administrative physician under s.448.04 (1) (ac), Stats., and also govern practice thereunder.

Med 23.02 Application, credentials and eligibility. An applicant for an administrative physician license must provide a completed and verified application which includes proof that the applicant has graduated from and possesses a diploma from a medical or osteopathic school approved by the board; and documentary evidence of completion of a postgraduate training program approved by the board. Applicants for an administrative physician license must also meet the same qualifications for licensure as applicants applying under s.448.05 (2) (a) or (b), Stats.

Med 23.03 Fees. The required fees must accompany the application, and must be made payable to the Wisconsin department of safety and professional services.

Med 23.04 Practice limitations. The Board may issue an administrative physician license to an applicant whose primary responsibilities are those of an administrative or academic nature; such as professional managerial, administrative, or supervisory activities. The holder of an administrative physician license may not examine, care for, or treat patients. An administrative physician license does not include the authority to prescribe drugs or controlled substances, delegate medical acts, issue opinions regarding medical necessity or conduct clinical trials on humans.

Med 23.05 Registration and renewal. Each administrative physician licensee shall register biennially with the board. Administrative physicians who possess the degree of doctor of osteopathy must register by March 1st of each even-numbered year. Administrative physicians who possess the degree of doctor of medicine must register on or before November 1 of each odd-numbered year. The department shall mail to each licensee, at his or her last known address as it appears in the records of the board, a notice of renewal for registration. 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. The administrative physician licensee must comply with all other provisions of s. 448.13, Stats. and of ch. Med 13.

Med 23.06 Examination. In accordance with Med 1.06 applicants may be required to complete an oral interview at the discretion of the board.

SECTION 12. EFFECTIVE DATE. The rules adopted in this order shall take effect on April 1, 2015, pursuant to s. 227.24 (1) (c), Stats.

(END OF TEXT OF RULE)

Dated January 21, 2015

Agency

/s/ Kenneth Simons
Chairperson
Medical Examining Board