

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DENTISTRY EXAMINING BOARD
DENTISTRY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 11-034)

PROPOSED ORDER

An order of the dentistry examining board to repeal the note following DE 1.02 (2); and to amend DE 1.02 (2), 2.015 (1) (c), (2) (a) and (b), (3), and (4), and 2.04 (1) (e), relating to the active practice of dentistry, specialty certification, and faculty licenses.

Analysis prepared by the department of safety and professional services.

ANALYSIS

Statutes interpreted:

Sections 447.04 (1) (a) 6., (b) 1., (c), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2), 447.04 (1) (c) 4., Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., requires that examining boards shall promulgate rules for their own guidance and for the guidance of the professions over which they have jurisdiction. Section 227.11 (2), Stats., permits an agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency. Section 447.04 (1), Stats., authorizes the Wisconsin dentistry examining board to grant a license to practice dentistry to any individual who meets the requirements set forth in that subsection.

Related statute or rule:

There are no other related statutes or rules beyond those indicated above.

Plain language analysis:

The dentistry examining board believes that its existing rules create barriers to licensing dentists. Currently, the board's active practice rule does not recognize residency training as a qualifying activity for active practice in endorsement licensure, but the rule does count hours spent in

private practice and clinical instruction at a dentistry school accredited by the American Dental Association. The board therefore proposes to change the definition of active practice in s. DE 1.02 (2) to include years spent in post-doctoral dental residency training as qualifying for active practice hours for licensure by endorsement.

Next, the dentistry examining board proposes to amend s. DE 2.015 to extend the faculty license opportunities currently available for prospective faculty members at Marquette University School of Dentistry to prospective faculty members at accredited institutions in Wisconsin that teach dentistry to post-doctoral residents.

Lastly, the dentistry examining board will continue to accept board certification in an accredited specialty to meet the requirements of licensure by endorsement. However, the board proposes to repeal the requirement in s. DE 2.04 (1) (e) that specialty certification must have been obtained within the 10 years preceding a licensure application, as the board has determined it is not necessary to restrict the time for acquiring the specialty certification.

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

There are no federal regulations regarding the licensure of dentists.

Comparison with rules in adjacent states:

Illinois:

Applicants for dentistry licensure by endorsement in Illinois must have been “lawfully engaged in the practice of dentistry...for at least 3 of the 5 years immediately preceding the filing of his or her application...” For purposes of endorsement licensure, the practice of dentistry includes the practice of a licensed dental specialty. An applicant may also count time spent practicing dentistry in the military service, if such service was within the immediately preceding 5 years. 225 ILCS 25/19. 68 Ill. Admin. Code 1120.410 a).

Applicants for licensure in a dental specialty must have passed an examination for specialty licensure within 3 years prior to specialty licensure. 68 Ill. Admin. Code 1220.320 e).

Persons with full-time appointments to teach dentistry at an approved dental school or hospital situated in Illinois may receive, without examination, a restricted faculty dentistry license. 225 ILCS 25/11 (d).

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1296&ChapterID=24>,
<http://www.ilga.gov/commission/jcar/admincode/068/068012200D04100R.html>.

Iowa:

The Iowa statutes permit licensure of dentists “by credentials” for applicants licensed to practice dentistry in another state, territory, or district of the United States. Such applicants must have been engaged in the legal practice of dentistry in the jurisdiction in which they were licensed for the three consecutive years immediately preceding their application for Iowa licensure. Iowa

Code s. 153.21. The statutory definition of the “practice of dentistry” does not preclude practice in the United States military service. Iowa Code s. 153.13.

Neither the Iowa statutes, nor its administrative rules make any reference to certification in a dental specialty in the context of application for licensure by credentials.

Under s. 153.37, Iowa Code, the Iowa dental board may issue a permit to practice dentistry within a college of dentistry and its affiliated teaching facilities to a faculty member of such college who is not otherwise a licensed Iowa dentist. Section 650-13.2 (1), Iowa Admin. Code, specifies that “[t]he board may issue a faculty permit entitling the holder to practice dentistry...as a faculty member within the University of Iowa College of Dentistry...and affiliated teaching facilities.”

<http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm>.

Michigan:

Michigan applicants for licensure as a dentist by endorsement do not have to have been practicing in the endorsing state for any minimum amount of time. However, if the applicant has practiced in the other jurisdiction for less than 5 years, and had taken a regional or state examination administered by an entity other than the North East Regional Board of Dental Examiners (NERB), he or she must arrange to have the examination taken evaluated by the Michigan board of dentistry for a determination of equivalency to NERB. If the dentistry board finds non-equivalency, the applicant will be required to pass all or part of the NERB examination for Michigan licensure. Michigan Admin. Code R 338.11255 (2) (f).

An applicant for specialty licensure by endorsement must first obtain a license to practice general dentistry. Thus, the foreign-jurisdiction specialty license must meet the requirements for a general dentistry license in Michigan to be used as the basis for endorsement licensure. The new licensee may then use his or her foreign-jurisdiction specialty certification to apply for specialty licensure by endorsement in Michigan. R 338.11267 (1).

Finally, the Michigan dentistry board “may issue a limited license...to an individual who is a graduate dentist...and who is employed by a dental program or a dental auxiliary program as a faculty member.” R 338.11247 (3). There does not appear to be any limitation on the site of the dental program employment other than that it should be in Michigan.

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33811101&Dpt=LG&RngHigh=. See also, http://www.michigan.gov/lara/0,1607,7-154-27417_27529_27533---,00.html.

Minnesota:

An applicant for dentistry licensure by credentials in Minnesota may become licensed in Minnesota based on his or her performance record if, among other things, the applicant has been in active practice at least 2,000 hours within 36 months of the application date. Section 150A.06, Subd. 4. (a) (1), Minn. Stats. The Minnesota administrative rules provide that the

active practice of dentistry in United States government service may also count toward the hours requirement for licensure by credential. Section 3100.1400 A., Minnesota Admin. Rules.

Applicants for general dentistry licensure by credentials may not count specialty practice hours toward the 2,000 active practice requirement. However, licensure in a dental specialty in Minnesota does not require a general dentistry license first. Section 150A.06, Subd. 1c., Minn. Stats. Thus, an applicant for licensure by credentials as a dental specialist may count time spent in active dental specialty practice in another jurisdiction or a postdoctoral specialty education program or United States government service toward the hours requirement. Section 150A.06, Subd. 1c. (b) (3).

To practice dentistry in a school of dentistry, a faculty member must hold either a “limited faculty license,” or a “full faculty license.” Section 150A.06, Subd. 1a. (a), Minn. Stats. The board of dentistry may issue such licenses to faculty members of a Minnesota school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association. Sections 150A.06, Subd. 1a. (a), (b), Minn. Stats.

<https://www.revisor.mn.gov/statutes/>.

Summary of factual data and analytical methodologies:

The dentistry examining board seeks to remove some unnecessary roadblocks to licensure for dentists. Allowing residency hours to count as active practice hours for licensure by endorsement and allowing board certification, regardless of when obtained, to count in meeting the requirements of licensure by endorsement will make licensure easier for endorsement candidates. Additionally, medical institutions which teach dentistry in post-graduate residency training programs have been requesting for years that the faculty license be extended to other institutions which train dental residents, beyond the Marquette University School of Dentistry. This rule clarifies that faculty licenses may be issued to individuals with job offers from institutions with post-graduate residency training programs and clarifies that the safeguards associated with the faculty license apply to those institutions as well. This change will allow more candidates to obtain a faculty license.

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

Under s. 227.137, Stats., as it existed prior to the passage of 2011 Wisconsin Act 21, the requirement for an economic impact report did not apply to the department of regulation and licensing (now named the department of safety and professional services). Under s. 9355 (2) of Act 21, this rule-making proposal is not subject to the new version of s. 227.137, Stats., but proceeds instead under the pre-Act 21 version. Thus, no economic impact analysis of this proposal is required.

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 were reviewed by the department’s small business review advisory committee on May 19, 2011. It was determined the rules will not have a 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 Greg.Gasper@Wisconsin.gov, or by calling 608-266-8608.

Agency contact person:

Kris Anderson, Department of Safety and Professional Services, Division of Board Services, 1400 E. Washington Ave., Rm. 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone: 608-261-2385; email: Kristine1.Anderson@Wisconsin.gov.

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

Comments may be submitted to Kris Anderson, Department of Safety and Professional Services, Division of Board Services, 1400 E. Washington Ave., Rm. 151, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email: Kristine1.Anderson@Wisconsin.gov. Comments must be received on or before September 7, 2011 at 8:30 a.m. to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. DE 1.02 (2) is amended to read:

DE 1.02 Definitions. As used in rules of the dentistry examining board:

...

(2) “Active practice of dentistry” means having engaged in at least 750 hours of the practice of dentistry within the 12-month period preceding application for licensure in Wisconsin. Hours of practice must be performed in private practice, accredited post-doctoral dental residency training, the armed forces of the United States, the United States public health service, or as a licensed clinical instructor in a school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association, with a current license to practice dentistry in that jurisdiction.

Note: The requirement of “a current license to practice dentistry in the jurisdiction” applies to clinical instructors at schools accredited by the American dental association, and not to persons practicing with the United States armed forces or public health service because persons practicing with the armed forces of the public health service of the United States have a current license in some jurisdiction as a condition precedent to practice under the auspices of the federal government.

SECTION 2. DE 2.015 (1) (c), (2) (a), (b), (3), and (4) are amended to read:

DE 2.015 Faculty license. (1) ~~(c)~~ Submits a written certification from ~~the dean of a~~ an accredited post-doctoral dental residency training program or accredited school of dentistry in this state that the applicant has been offered employment as a full-time faculty member in that program or at that school of dentistry.

(2) A license granted under sub. (1) authorizes the license holder to do all of the following:

(a) Practice dentistry only within ~~an~~ the primary educational facility that is physically located within a affiliated with an accredited post-doctoral dental residency training program or accredited school of dentistry in this state.

(b) Perform dental procedures that are incident to instruction while at a site affiliated with ~~a~~ an accredited post-doctoral dental residency training program or accredited dental school of dentistry located in this state.

(3) A license granted under sub. (1) shall not be transferable to another accredited school of dentistry in this state or accredited post-doctoral dental residency training program without prior approval by the board.

(4) A license granted under sub. (1) is no longer in effect if the license holder ceases to be employed as a full-time faculty member at ~~a~~ an accredited post-doctoral dental residency training program or accredited school of dentistry in this state. The license holder shall notify the board in writing within 30 days of the date on which his or her employment as a licensed faculty member under sub. (1) is terminated.

SECTION 3. DE 2.04 (1) (e) is amended to read:

DE 2.04 Endorsement. (1) (e) The applicant has successfully completed a clinical and laboratory demonstration licensing examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service, or, alternatively, has successfully completed a board specialty certification examination in a dental specialty recognized by the ~~of an American dental association accredited specialty within the previous 10 years~~ Dental Association.

(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
Dentistry Examining Board

DE 1, 2 CR 11-034 (Active practice, faculty licenses, specialty certification) Final draft 2-28-12