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CITIZENSHIP AND EXAMINATION PASSING SCORE RULES

STATEMENT OF NEED AND REASONABLENESS

Minnesota rules 7MCAR § 4.002, 4.004, 4.005, 4.006, 4.007 and 4.008 establish the licensure requirements for the practice of medicine in the state of Minnesota. Over the last several decades these rules have served as the regulative standards for administering the Medical Practices Act, Minnesota Statute § 147.01 et. seq.

Two rule changes are being proposed at this time. The citizenship requirements in the existing rules are being deleted because of a series of court decisions and legal opinions throughout the country holding such restrictions to be unconstitutional. The other change concerns the passing score for the licensure examinations used by the Board to license physicians and osteopaths. A change is being made to keep Minnesota standards for medical licensure equivalent to other states. This document will go deeper into need and reasonableness for the changes.

In preparing this draft for public hearing the revisor's office made minor changes to the rule. The changes consist of adding titles to the sub-sections, grammatical changes (changing "shall" to "must", "thereof" to "of it", etc.), updating gender (changing "he" to "he or she"), and spelling out abbreviations (changing "MSA" to "Minnesota Statutes", "M.D." to "medical doctor", "30" to "thirty", etc.). While these changes clarify and update the rule, they do not change the intent or thrust of the rule. Therefore these minor changes will not be covered in this text.

7 MCAR § 4.002 APPLICATION FOR LICENSURE TO PRACTICE MEDICINE AND SURGERY

- A. No change
- B. No change
- C. No Change
- D. No Change
- E. No Change

F. No Change

G. THIS ENTIRE SUB-SECTION HAS BEEN DELETED.

It is the opinion of the Attorney General's office that this provision, based upon legal interpretation and existing court precedents, would not stand up to the "equal protection clause" of the 14th Amendment to the U.S. Constitution. The 14th Amendment requires that "No State shall...deny to any person within its jurisdiction the equal protection of the law." Since this rule would prevent residents of Minnesota, who are not citizens of the United States or Canada, from being able to meet the same criteria for medical licensure as U.S. citizens, it is apparent that this particular rule is not constitutional. Because the rule is unconstitutional, the Board has not enforced the citizenship requirements since shortly after being advised by the Attorney General's office that the rule is unenforceable. A copy of a letter from the Attorney General's Office to the Medical Board regarding this rule has been enclosed in the appendix.

7 MCAR § 4.004 LICENSE BY RECIPROCITY TO PRACTICE MEDICINE AND SURGERY

A. No Change

B. No Change

C. PASSING GRADE. A FLEX WEIGHTED AVERAGE OF 75.0 OR A GRADE AVERAGE OF 75.0 ON EXAMINATION OTHER THAN FLEX SHALL BE THE PASSING GRADE ON ALL EXAMINATIONS GRADED BY THE BOARD. ~~A-MINIMUM-GENERAL-AVERAGE-OF-75-IN-ALL-SUBJECTS-SHALL-CONSTITUTE-A-GRADE-SATISFACTORY-FOR-LICENSURE.--AN-APPLICANT-MAY-FALL-BELOW-75-IN-ONE-SUBJECT-AND-STILL-BE-LICENSED-BY-THE-BOARD.--IF-AN-APPLICANT-FALLS-BELOW-75-IN-MORE-THAN-TWO-SUBJECTS,--IT-SHALL-CONSTITUTE-A-FAILURE-AND-REQUIRE-THAT-THE-APPLICANT-RETAKE-THE-ENTIRE-EXAMINATION-WITH-PASSING-GRADES-IN-ORDER-TO-BE-ELIGIBLE-FOR-LICENSURE--AN-APPLICANT-FAILING-TWO-SUBJECTS-MAY-RETAKE-THE-TWO-SUBJECTS-AT-THE-NEXT-EXAMINATION-AND-UPON-RECEIVING-A-MINIMUM-GRADE-OF-75-IN-EACH-MAY-BE-ELIGIBLE-FOR-LICENSURE.~~ IF THE APPLICANT FAILS THE EXAMINATION HE OR SHE SHALL REPEAT THE ENTIRE EXAMINATION. AN APPLICANT MAY TAKE THE TEST NO MORE THAN FIVE TIMES, AT WHICH POINT HE OR SHE IS NO LONGER ELIGIBLE TO TAKE THE EXAMINATION. AN APPLICANT WHO HAS FAILED THE EXAMINATION FIVE TIMES IS NOT ELIGIBLE FOR LICENSURE BY THE BOARD.

The changes in the passing grade for the examinations required for medical licensure, stipulated in this particular rule, represents an upgrading of Minnesota's standards so that it will be equivalent to most other states. Although the change in the passing score from an average of 75 to an average of 75.0 seems rather insignificant, it does represent a change in the actual passing score. An average of 75.0 would yield a lowest possible score of 74.51, in actuality this represents a change of almost one-half point. This change in the passing test score requirement is not an unreasonable increase in that medical licensure in almost every other state requires compliance with this standard. No appreciable shortage of physicians has resulted. While this score is reasonably attainable, it is sufficiently high to assure that only competent individuals pass the examination and are licensed to practice medicine in Minnesota. This change will assist in processing reciprocity applications and will provide Minnesota residents with medical standards equivalent to other states.

The rule is also being changed to prohibit an individual from taking the examination more than five times as well as to prohibit licensure of an applicant who took the examination more than five times outside of Minnesota. It is the Board's view that failure to pass the examination after a number of attempts reflects on the competence of the individual. If an applicant fails the examination more than five times, any subsequent passing score may reflect that the applicant has learned how to take the examination rather than proving that the applicant has become competent to practice medicine. A competent medical graduate has ample opportunity to prove his or her ability over the course of five examinations. If the applicant fails each of these times, the Board is justified in concluding that the applicant should not practice medicine in Minnesota.

The setting of a limit on the number of times a person may take a licensure examination is not unusual. Most graduates of American medical schools take an examination administered by the National Board of Medical Examiners to enable them to become licensed in Minnesota. The National Board cannot limit the number of times a medical student takes the examination because it is administered by the medical schools. However, the National Board refuses to recognize any score obtained by a medical student who has failed the examination four times. (The National Board allows an applicant to take the examination three times, with an extra opportunity based upon petition.) Thus the National Board has set a limit of four times on the number of times a student may take its examination and have his or her score certified to the state licensing authority. The Board's licensing examination is primarily administered to foreign medical graduates. By allowing FLEX applicants unlimited opportunities to take the FLEX the applicant would have an unreasonable advantage, over American trained physicians, an advantage which might cover-up medical liabilities.

The final sentence of the proposed rule is necessary for reasons of fairness when an applicant seeks licensure by reciprocity. Since no one will be able to take the FLEX examination more than five times in Minnesota, it would be unfair to license by reciprocity an applicant who took the examination more than five times in another state. The provision will prohibit licensure under these circumstances.

D. THIS ENTIRE SUB-SECTION HAS BEEN DELETED.

This rule is a citizenship requirement identical to 7MCAR 4.002.G. The need and reasonableness for deleting this rule would be same as the argument presented in that section.

7 MCAR 4.005 LICENSURE BY ENDORSEMENT WITHOUT EXAMINATION TO PRACTICE MEDICINE AND SURGERY.

A. No Change

B. No Change

C. No Change

D. THIS ENTIRE SUB-SECTION HAS BEEN DELETED.

This rule is a citizenship requirement identical to 7MCAR 4.002.G.

The need and reasonableness for deleting this rule would be the same as the

argument presented in that section.

7 MCAR § 4.006 TEMPORARY PERMITS TO PRACTICE MEDICINE AND TEMPORARY CERTIFICATES
FOR GRADUATE TRAINING.

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. THIS ENTIRE SUB-SECTION HAS BEEN DELETED.

This rule is a citizenship requirement identical to 7 MCAR § 4.002.G.

The need and reasonableness for deleting this rule would be the same as the argument presented in that section.

7 MCAR § 4.007 LICENSURE OF FOREIGN GRADUATES IN MEDICINE AND SURGERY.

- A. No change
- B. No change
- C. No change
- D. No change
- E. THIS ENTIRE SUB-SECTION HAS BEEN DELETED

This rule is a citizenship requirement identical to 7 MCAR § 4.002.G.

The need and reasonableness for deleting this rule would be the same as the argument presented in that section.

7 MCAR § 4.008 LICENSURE TO PRACTICE MEDICINE AND SURGERY BY PERSONS LICENSED
TO PRACTICE OSTEOPATHY.

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change

F. THIS ENTIRE SUB-SECTION HAS BEEN DELETED.

This rule is a citizenship requirement identical to 7 MCAR § 4.002.G.

The need and reasonableness for deleting this rule would be the same as the argument presented in that section.

RESOLUTION

"RESOLVED, that the rules relating to medical licensure requirements identified as 7 MCAR §§ 4.002 and 4.004-4.008 are found to be reasonable, necessary and supported by the evidence contained in the record, and are hereby approved and adopted, pursuant to authority vested in us by Minn. Stat. § 147.01, subd. 3 (1982) and that Arthur W. Poore, Executive Secretary of the Minnesota Board of Medical Examiners, be and hereby is authorized to sign an order adopting those rules."

Passed on 3/10/84