

## DEPARTMENT OF HEALTH

### NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 *et seq.* (2007 Repl. & 2012 Supp.)), as amended, and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of its adoption, without changes, of the following amendment to §4611 of chapter 46 (Medicine) of title 17 (Business, Occupations, and Professions) of the District of Columbia Municipal Regulations.

This rulemaking sets forth provisions that reduce the paperwork that the Health Regulations and Licensing Administration will receive from each applicant, thereby streamlining the application process and reducing waste; require a late fee for late renewal applications; require a late fee for applications received after the new application deadline; establish the maximum amount of hours the holder of a medical training license or registration may practice per week; restrict the Medical Training Registration program to postgraduate physicians in a clinical training residency program; rearrange the existing content to better organize the section; define key terms; clarify the language in numerous provisions to increase comprehension by the reader; and repeal *ultra vires* provisions pertaining to practice by medical students within the course of the medical school curriculum. The rulemaking adheres to the statutory provisions of the Board of Medicine Membership and Licensing Amendment Act of 2012 ("Act"), effective March 14, 2012 (D.C. Law 19-104; 59 DCR 435).

The existing regulations which this rulemaking will amend contain *ultra vires* provisions pertaining to medical students that do not conform with the Act. This rulemaking will immediately repeal those *ultra vires* provision upon publication. Furthermore, after conferring with graduate medical education program directors of District of Columbia medical institutions, it became apparent to the Board of Medicine that confusion and ambiguity existed in the interpretation of the existing regulations. This rulemaking will clarify the existing provisions and, therefore, reinforces a more structured and more uniform system of administration which will ultimately make for a better training experience for, and enhance the technical proficiency of, the postgraduate medical trainees.

The proposed rulemaking which this rulemaking adopts as final was published in the *D.C. Register* on March 15, 2013, at 60 DCR 3720. A truncated comment period of five (5) days was held based on the need to avoid entering the Medical Training Licensing year under the invalid and ambiguous provisions that existed prior to this rulemaking. No comments were received in connection with the publication of the proposed rulemaking during the comment period. As a result, no changes, substantive or technical, were made to the rulemaking.

The Director took final rulemaking action on March 22, 2013. Having no reason to delay implementation of these rules, these final rules will be effective upon the publication of this notice in the *D.C. Register*.

**SECTION 4611, PRE-LICENSURE PRACTICE BY STUDENTS AND POSTGRADUATE PHYSICIANS, OF CHAPTER 46, MEDICINE, OF TITLE 17, BUSINESS, OCCUPATIONS, AND PROFESSIONS, is amended as follows:**

**Delete the present Section 4611 and substitute the following section and language:**

**4611 PRE-LICENSURE PRACTICE BY POSTGRADUATE PHYSICIANS**

4611.1 For purposes of this section, the following terms have the meanings indicated:

“Postgraduate physician” means:

- (a) A person who: (1) holds a degree in medicine or osteopathy; and (2) is enrolled in a postgraduate clinical training residency program prior to licensure in any jurisdiction in the U.S.; or
- (b) A person who: (1) has completed a residency program in a postgraduate clinical training program; (2) is enrolled in a postgraduate clinical training fellowship program; and (3) is licensed in any jurisdiction in the U.S..

“Medical training license” means a limited medical license issued only to a postgraduate physician.

“Medical training registration” means documentation and assignment of a registration number to a registrant, as defined in this chapter, only for the purpose of participating in a rotation within a postgraduate clinical training residency program.

“Medical training licensee” means a person who holds a valid medical training license issued by the Board.

“Medical training registrant” means a person who is enrolled in a postgraduate clinical training residency program in the District, participating in a rotation within that program for no more than 90 days.

4611.2 Medical training licenses shall be classified as follows:

- (a) Type I(A), who are qualifying applicants that are U.S. or Canadian medical school-trained postgraduate physicians;

- (b) Type I(B), who are qualifying applicants that are foreign medical school-trained postgraduate physicians enrolled in a postgraduate clinical training residency program; or
- (c) Type II, who are qualifying applicants that are foreign trained medical physicians participating in an Accreditation Council for Graduate Medical Education (ACGME), American Osteopathic Association (AOA), or Board approved postgraduate clinical training fellowship program.

4611.3 Unless the postgraduate physician qualifies for, and receives, a medical training license or medical training registration to practice medicine in the District, a postgraduate physician may not practice medicine in a clinical training program.

4611.4 A postgraduate physician shall do the following:

- (a) Be enrolled with one or more institutions sponsoring the clinical training program(s) describing the terms and conditions of the postgraduate physician's employment, or participation in the program, which shall be kept on file at the sponsoring institution;
- (b) Submit, not later than 90 days prior to the commencement of the postgraduate physician's participation in a clinical training program in the District, the documentation required for a new medical training license application. A postgraduate physician may submit a late application for a new medical training license less than 90 days prior to the commencement of the clinical training program only after paying a late application fee;
- (c) Submit, prior to the commencement of each training year, the documentation required for a medical training license renewal application for review no earlier than March 1st but not later than May 31st of the training year;
- (d) Inform, and permit the training program to notify, the Board in writing when the postgraduate physician leaves a clinical training program before the scheduled ending date of the program, specifying the reason for leaving as academic or nonacademic reasons;
- (e) Grant the Board access to, and permit the training program to disclose, all postgraduate education records, to the extent the disclosure does not violate any District or federal laws;

- (f) Be supervised by a licensed physician who is: (1) a member of the medical staff of the medical institution or medical facility through which the clinical training program takes place; and (2) approved by the clinical training program to be a supervising physician;
- (g) If it is the postgraduate physician's intention to continue to practice medicine in the District, obtain a license to practice medicine in the District within five (5) years of having graduated from a United States or Canadian medical school or upon the completion of a postgraduate clinical training residency program, whichever comes first, unless the postgraduate physician is enrolled in a seven (7) year postgraduate clinical training program in surgery, in which case the postgraduate physician shall obtain a license to practice medicine in the District within seven (7) years of having graduated from a United States or Canadian medical school or upon the completion of a postgraduate clinical training residency program, whichever comes first;
- (h) Identify himself or herself as such at all times when practicing medicine;
- (i) Comply with the standards of conduct for a licensed physician set forth in this chapter and the Act;
- (j) Practice medicine for no more than the maximum number of hours permitted by the ACGME; and
- (k) Practice medicine only in a clinical training program where the postgraduate physician is enrolled.

4611.5

Unless waived by the Board, a postgraduate physician applying for a medical training license or registration shall submit, as appropriate, or cause to be submitted, to the Board for consideration the following:

- (a) A completed application form, with a signed statement attesting to the truth and accuracy of its contents;
- (b) A photograph taken not more than three (3) months prior to submission, whose dimensions are at least two inches (2 in.) by two inches (2 in.), which shall be affixed to the application;
- (c) The Graduate Medical Education (GME) program director's attestation that the postgraduate physician has graduated from an accredited U.S. or foreign medical school;
- (d) If a graduate of a medical school outside the U.S. or Canada, the original of a currently valid Educational Commission for Foreign

Medical Graduates (ECFMG) certification;

- (e) If applicable, documentation verifying name change;
- (f) The results of a criminal background check, completed pursuant to D.C. Official Code § 3-1205.22 (2001) and chapter 85 of this title;
- (g) Payment of the license fee plus the cost of the criminal background check;
- (h) The GME program director's attestation verifying the applicant's acceptance into the program and the commencement date of the program;
- (i) The GME program director's attestation that the applicant for a Type I medical training license has taken and received a passing score on (1) the United States Medical Licensing Examination (USMLE) Step 1 and both parts of Step 2; or (2) the Comprehensive Osteopathic Medical Licensure Examination (COMLEX) Levels 1 and 2;
- (j) The GME program director's attestation that the applicant for a Type II medical training license has taken and received a passing score on (1) the United States Medical Licensing Exam (USMLE) Step 1, both parts of Step 2, and Step 3; or (2) the Comprehensive Osteopathic Medical Licensure Examination (COMLEX) Levels 1 and 2;
- (k) The GME program director's attestation of the accuracy and veracity of his or her attestations described in § 4611.5. The attestation shall be received by the Board no later than May 31st of each year; and
- (l) If requested, any additional information the Board considers necessary to properly evaluate the applicant's competence and character.

4611.6 Each GME program director shall submit to the Board by March 31st of each year a complete list of ACGME, AOA, and Board approved programs within their training institution including the names, specialty training, and participation year of all participants. The list of ACGME, AOA, and Board approved programs within the training institution, including the names, specialty training, and participation year of all participants may be amended until April 30th of that year.

4611.7 The Board, in its discretion, may waive any requirement for obtaining a medical training license or registration upon good cause.

- 4611.8 A medical training license shall be issued for a period not to exceed one (1) year.
- 4611.9 A postgraduate physician, as defined in paragraph 4611.1(a), may practice pursuant to this section for a maximum of five (5) years in a postgraduate clinical training program if the postgraduate physician has a valid agreement with the medical institution sponsoring the clinical training residency program, unless the postgraduate clinical training program is a seven (7) year surgery program, in which case the postgraduate physician may practice pursuant to this section for a maximum of seven (7) years:
- (a) Type I(A) licensees - the five (5) or seven (7) year period for graduates of U.S. and Canadian medical schools shall begin with the graduation from medical school; and
  - (b) Type I(B) licensees - the five (5) or seven (7) year period for graduates of foreign medical schools, other than Canadian medical schools, shall begin at the beginning of an approved U.S. postgraduate clinical training residency program.
- 4611.10 A postgraduate physician, as defined in paragraph 4611.1(b), may renew a Type II license one (1) time pursuant to this section if the postgraduate physician has a valid agreement with the institution, organization, or agency sponsoring the clinical training fellowship program. Any subsequent renewals of a Type II license may be approved at the discretion of the Board.
- 4611.11 A postgraduate physician may be disciplined for conduct that violates the Act or this chapter. The Board may deny an applicant a license, or take other disciplinary action against a student or postgraduate physician who is found to have violated the Act or this chapter, in accordance with Chapter 41 of this title.
- 4611.12 A postgraduate physician shall be exempt from the payment of the application fee, provided such postgraduate physician is participating in a short term, required, ACGME or AOA approved training program rotation of no more than ninety (90) days. Such participants shall enroll as medical training registrants with the Board prior to commencing the rotation. Such participants, if licensed in another state, may either enroll as a medical training licensee or apply for full licensure in the District of Columbia.
- 4611.13 An applicant who submits an application to renew more than sixty (60) days after the expiration date of the medical training license shall be subject to payment of a renewal late fee.

**SECTION 3500, FEES, subsection 3500.1, of chapter 35, LICENSING FEES, of title**

**17, BUSINESS, OCCUPATIONS, AND PROFESSIONS, is amended as follows:**

**The paragraph MEDICAL TRAINEES is amended to add as follows:**

Late Application Fee	\$25.00
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