



STATE OF WISCONSIN
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Governor Scott Walker Secretary Dave Ross

MEDICAL EXAMINING BOARD
Room 121A, 1400 E. Washington Avenue, Madison
Contact: Tom Ryan (608) 266-2112
May 15, 2013

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions of the Board.

AGENDA

8:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A. Adoption of Agenda (1-4)**
- B. Approval of Minutes of April 24, 2013 (5-12)**
- C. Administrative Updates
 - 1. Staff Updates
- D. Legislative/Administrative Rule Matters:**
 - 1. Wis. Admin. Code Chapter MED 10
 - 2. Discussion and Consideration of Draft of Proposed Occupational Therapists Rules Relating to Practice Standards **(13-24)**
- E. Discussion and Consideration of Request for Dr. Musser to Participate on a Panel on Opioid Prescribing – Meriter Hospital Madison – November 1, 2013 (25-28)**
- F. Screening Panel Report
- G. Discussion and Consideration of Visiting Faculty Licensing (Time Permitting)**
- H. Budget Report Follow-up (Time Permitting)
- I. Discussion and Consideration of ACGME Post-Graduate Education Requirement (Time Permitting)

- J. Items Added After Preparation of Agenda:
- 1) Introductions, Announcements and Recognition
 - 2) Executive Director Matters
 - 3) Education and Examination Matters
 - 4) Credentialing Matters
 - 5) Practice Matters
 - 6) Disciplinary Matters
 - 7) Legislation/Administrative Rule Matters
 - 8) Informational Items
 - 9) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
 - 10) Presentation of Proposed Decision(s)
 - 11) Presentation of Interim Order(s)
 - 12) Petitions for Re-Hearing
 - 13) Petitions for Summary Suspension
 - 14) Petitions for Assessments
 - 15) Petitions to Vacate Orders
 - 16) Petitions for Designation of Hearing Examiner
 - 17) Requests for Disciplinary Proceeding Presentations
 - 18) Motions
 - 19) Petitions
 - 20) Appearances from Requests Received or Renewed
 - 21) Speaking Engagement, Travel, and Public Relation Requests

K. Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.; consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85(1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.)

L. **Monitoring Matters**

1. **9:30 A.M. APPEARANCE – Paul Huepenbecker, M.D. – Requesting Full Licensure (29-46)**

M. **Credentialing Matters**

1. **Yücel Yankol, M.D. – Reconsideration of Visiting Professor Licensure (47-94)**
2. **Joohyun Kim, M.D. – Seeking ACGME Equivalency (95-120)**

N. **Proposed Decision and Order in the Matter of the Disciplinary Proceedings Against Michael N. Mangold, M.D., DHA Case No. SPS-12-0066, DLSC case no. 12 MED 103 (121-138)**

- O. Presentation and Deliberation of Items from DLSC Attorney Kim Kluck**
- 1. Complaints for Determination of Probable Cause**
 - a. Ronald Plemmons, M.D. – 12 MED 231 (139-148)**
 - Case Advisor: **Ms. Jude Genereaux**
 - b. George F. Knight, M.D. – 13 MED 015 (149-152)**
 - Case Advisor: **Russell Yale, M.D.**
 - c. Amjad Butt, M.D. – 12 MED 241 (153-160)**
 - Case Advisor: **Ms. Jude Genereaux**
 - 2. Administrative Warnings**
 - a. 12 MED 277, R.G.K. (161-164)**
 - Case Advisor: **Mr. James Barr**
 - b. 12 MED 291, T.J.V. (165-166)**
 - Case Advisor: **Timothy Westlake, M.D.**
- P. Presentation and Deliberation of Items from DLSC Attorney Arthur Thexton**
- 1. Proposed Stipulations, Final Decisions and Orders**
 - a. William B. Lyles, M.D. – 09 MED 197 (167-178)**
 - Case Advisor: **Dr. Sandra Osborn**
 - b. Donald Riemer, M.D. – 13 MED 134 (179-184)**
 - Case Advisor: **Dr. Sridhar Vasudevan**
 - 2. Administrative Warnings**
 - a. 11 MED 064, G.X.Z.**
 - Case Advisor: **Dr. Timothy Swan (185-188)**
- Q. Presentation and Deliberation of Items from DLSC Attorney Sandra Nowack**
- 1. Complaints for Determination of Probable Cause**
 - a. Donna J. De Louis, D.O. – 12 MED 434 (187-190)**
 - Case Advisor: **Mr. James Barr**
 - 2. Proposed Stipulations, Final Decisions and Orders**
 - a. Jacob Kusmak, M.D. – 12 MED 159 (191-196)**
 - Case Advisor: **Ms. Jude Genereaux**
 - b. David L. Werwath, M.D. – 13 MED 016 (197-222)**
 - Case Advisor: **Ms. Jude Genereaux**
- R. DLSC Matters:**
- 1) Case Status Report
 - 2) Case Closing(s)
- S. Consulting with Legal Counsel**

- T. Deliberation of Items Added After Preparation of the Agenda
- 1) Disciplinary Matters
 - 2) Education and Examination Matters
 - 3) Credentialing Matters
 - 4) Proposed Stipulations, Final Decisions and Orders
 - 5) Proposed Decisions
 - 6) Proposed Interim Orders
 - 7) Complaints
 - 8) Petitions for Summary Suspension
 - 9) Remedial Education Cases
 - 10) Petitions for Extension of Time
 - 11) Petitions for Assessments and Evaluations
 - 12) Petitions to Vacate Orders
 - 13) Motions
 - 14) Administrative Warnings
 - 15) Matters Relating to Costs
 - 16) Appearances from Requests Received or Renewed
 - 17) Monitoring Matters
 - 18) Professional Assistance Procedure (PAP) Matters
 - 19) Case Status Report
 - 20) Case Closings

- U. **12:00 P.M. – Room 121A, B, C, and 199 B – Reviewing Applications and Conducting Oral Examinations of Eight (8) Candidates for Licensure – Drs. Wasserman, Swan, Vasudevan, Erickson, Yale(tentative), Capodice(tentative), Musser(tentative), Westlake(tentative), Simons(tentative), and Misra(tentative) (223-224)**

- V. Ratifying Licenses and Certificates

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

- W. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate
- X. Open Session Items Noticed Above not Completed in the Initial Open Session (Time Permitting)
- Y. **1:00 P.M. – Board Retreat (225-260)**
1. Physician Discipline
 2. Disciplinary Guidelines

ADJOURNMENT

NEXT MEDICAL EXAMINING BOARD MEETING: 6/19/2013

**MEDICAL EXAMINING BOARD
MEETING MINUTES
APRIL 24, 2013**

PRESENT: James Barr; Gene Musser, MD; Kenneth Simons, MD; Greg Collins; Sheldon Wasserman, MD; Timothy Westlake, MD (*arrived at 10:00 a.m.*); Timothy Swan, MD (*arrived at 8:20 a.m.*); Mary Jo Capodice, DO

ABSENT: Sridhar Vasudevan, MD; Jude Genereaux; Rodney Erickson, MD; Suresh Misra, MD

STAFF: Tom Ryan, Executive Director; Matthew C. Niehaus, Bureau Assistant; and other Department Staff

CALL TO ORDER

Dr. Sheldon Wasserman, Chair, called the meeting to order at 8:07 a.m. A quorum of seven (7) members was present.

ADOPTION OF AGENDA

- **Item O (open session) – ADD “O. Board Retreat Planning”**
- **Item Y (closed session) – ADD “Y.2 Petition for Alcohol and Other Drug Abuse Assessment in the Matter of Case Number 11 MED 147 – Daniel T. Cabot, D.O.”**

MOTION: Mr. Jim Barr moved, seconded by Dr. Kenneth Simons, to adopt the agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF MARCH 20, 2013

MOTION: Mr. Jim Barr moved, seconded by, Dr. Kenneth Simons, to approve the minutes of March 20, 2013 as published. Motion carried.

Dr. Gene Musser abstained from voting in the matter of approval of the minutes.

EXECUTIVE DIRECTOR MATTERS

Spring Newsletter Content Review

MOTION: Dr. Greg Collins moved, seconded by Dr. Kenneth Simons, to approve the Spring Newsletter as amended and to designate Dr. Sheldon Wasserman to approve the final draft of the Spring Newsletter on behalf of the Board. Motion carried unanimously.

DISCUSSION AND CONSIDERATION OF CONTINUING EDUCATION AUDIT

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Timothy Swan, that the Department conduct an audit on continuing education credits every two years effective immediately. Motion carried unanimously.

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Russell Yale, to request DSPS staff draft a Scope Statement to address continuing education audits. Motion carried unanimously.

CONSIDERATION OF THE FSMB REQUEST FOR DR. KENNETH SIMONS TO SERVE AS CHAIR OF FSMB COMMITTEE

MOTION: Dr. Timothy Swan moved, seconded by Dr. Gene Musser, to approve Dr. Kenneth Simons' participation as chair of the FSMB telemedicine committee. Motion carried.

Dr. Kenneth Simons abstained from voting in the matter of the FSMB Request for Dr. Kenneth Simons to Serve as Chair of FSMB Committee.

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Timothy Swan, to approve Dr. Gene Musser to continue to serve on the FSMB education committee. Motion carried unanimously.

REQUEST FOR SPEAKER – WISCONSIN SOCIETY OF HEALTH CARE RISK MANAGEMENT – APRIL 26

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Timothy Swan, to designate Dr. Sheldon Wasserman as the Board's representative to speak at the Wisconsin Society of Health Care Risk Management Presentation on April 26, 2013. Motion carried unanimously.

SPEAKING ENGAGEMENTS

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Gene Musser, to designate Dr. Sheldon Wasserman as the Board's representative to speak at the Medical College of Wisconsin graduating class PFI course on in May, 2013. Motion carried unanimously.

MOTION: Dr. Gene Musser moved, seconded by Dr. Kenneth Simons, to approve a Board Member to serve as speaker at the patient family and society medical class at UW-Madison. Motion carried unanimously.

MOTION: Dr. Gene Musser moved, seconded by Dr. Russell Yale, to designate Mary Jo Capodice as the Board's representative to speak at Central States Occupation and Environmental Medical Association in Milwaukee on September 20, 2013. Motion carried unanimously.

LEGISLATIVE/ADMINISTRATIVE RULE MATTERS

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Gene Musser, to approve the changes to MED 10 as amended. Motion carried unanimously.

MOTION: Dr. Timothy Swan moved, seconded by Dr. Timothy Westlake, to adopt the following for the definition of inadequate supervision:
“Inadequate supervision. For the purposes of this section, to adequately supervise, a physician should be competent to perform the act in question, and must have reasonable evidence that the supervised individual is minimally competent to perform the act under the circumstances.”
Definitions 1, 3, 4, and 5 in section 10.02 will be deleted.
Motion carried unanimously.

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Gene Musser, to adopt the following as the definition of patient abandonment:
“Patient abandonment occurs when a physician without reasonable justification unilaterally withdraws from a physician-patient relationship by discontinuing a patient’s treatment regimen when further treatment is medically indicated and any of the following occur:

1. The physician fails to give the patient at least thirty (30) days’ notice in advance of the date on which the physician’s withdrawal becomes effective.
2. The physician fails to allow for patient access to or transfer of the patient’s health care record as required by law.
3. The physician fails to provide for continuity of prescription medications between the notice of intent to withdraw from the physician-patient relationship and the date on which the physician-patient relationship ends, if the prescription medications are necessary to avoid unacceptable risk of harm.
4. The physician fails to provide for emergency care during the period between the notice of intent to withdraw from the physician-patient relationship and the date on which the physician-patient relationship ends. Nothing in this section shall be interpreted to impose upon the physician a greater duty to provide emergency care to a patient than otherwise required by law.”

Motion carried unanimously.

SCREENING PANEL REPORT

Ms. Jude Genereaux reported via e-mail that forty-one (41) cases were reviewed. Twenty (20) cases were opened. Four (4) ten day letters were sent.

CLOSED SESSION

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Gene Musser, to convene to closed session pursuant to Wisconsin State statutes 19.85(1)(a)(b)(f) and (g) for the purpose of conducting appearances, reviewing monitoring requests, requests for licensure, deliberate on stipulations, administrative warnings, proposed decisions and orders, consulting with Legal Counsel and Division of Legal Services and Compliance case status reports. Dr. Sheldon Wasserman read the language of the motion. The vote of each member was ascertained by voice vote. James Barr-yes; Gene Musser, MD – yes; Russell Yale, MD-yes; Greg Collins-yes; Timothy Westlake, MD-yes; Timothy Swan, MD-yes; Kenneth Simons, MD-yes; Mary Jo Capodice, DO-yes; and Sheldon Wasserman, MD-yes. Motion carried unanimously.

The Board convened into Closed Session at 12:02 p.m.

CREDENTIALING MATTERS

Dr. Suresh Misra joined the meeting by teleconference at 12:15 p.m.

MOTION: Dr. Gene Musser moved, seconded by Dr. Timothy Westlake, to grant Yücel Yankol, M.D.'s request for licensure. Motion failed for lack of required number of votes.

Dr. Suresh Misra left the meeting at 12:40 p.m.

MOTION: Dr. Timothy Swan moved, seconded by Mr. Greg Collins, to issue an intent to deny in the matter of Yücel Yankol, M.D.'s request for licensure as visiting professor. The Board requests that Applicant provide documentary evidence of noteworthy attainment in a specialized field of medicine within 45 days. Motion carried unanimously.

MOTION: Dr. Timothy Westlake moved, seconded by Dr. Mary Jo Capodice, to find that Esin Çakmakçı Midia, M.D.'s post-graduate training is equivalent to a year of ACGME accredited training and grants a license after all other requirements are met. Motion carried.

Dr. Kenneth Simons abstained from deliberation and voting in the matter of Esin Çakmakçı Midia.

MONITORING MATTERS

MOTION: Dr. Timothy Westlake moved, seconded by Dr. Russell Yale, to grant the request of Dale Thomas Bertram, M.D. for removal of limitations and grant full licensure. Motion failed.

MOTION: Dr. Timothy Swan moved, seconded by Dr. Kenneth Simons, to limit the license of Donald Eugene Riemer, M.D. until the following terms and conditions:

- 1) Dr. Riemer may not engage in the practice of medicine until such time as he is compliant with Board Order.
- 2) Dr. Riemer may not engage in independent practice.
- 3) Dr. Riemer may not practice without direct face-to-face supervision.
- 4) Dr. Riemer must complete the SPEX with a passing score.

The Board designates the Chair as the Board's representative to review and sign the modified Order on behalf of the Board. Motion carried unanimously.

MOTION: Dr. Russell Yale moved, seconded by Dr. Kenneth Simons, to refer the matter of Donald Eugene Riemer, M.D. to DLSC for consideration as a violation of Board Order and possible summary suspension proceedings, if appropriate. The Board designates the Chair to select the Board representatives in any summary suspension proceedings. Motion carried unanimously.

DELIBERATION OF PETITION FOR REVIEW OF ORDER DENYING MOTION FOR SUMMARY JUDGMENT IN CASE NUMBER 12 MED 140, PERI L. ALDRICH, M.D.

MOTION: Dr. Gene Musser moved, seconded by Dr. Kenneth Simons, that the Board has jurisdiction to consider the petition. The Board denies the petition for review of order denying motion for summary judgment in case number 12 MED 140, Peri L. Aldrich, M.D. Motion carried unanimously.

PROPOSED STIPULATION AND ORDER FOR DISMISSAL (WITHOUT PREJUDICE) IN THE MATTER OF CASE NUMBER 11 MED 123, PERI L. ALDRICH, M.D.

MOTION: Dr. Gene Musser moved, seconded by Dr. Russell Yale, to issue the order for dismissal, without prejudice. Motion carried.

Dr. Sheldon Wasserman left the room at 2:10 p.m. and abstained from voting in the matter of order for dismissal (without prejudice) for case number 11 MED 123. Dr. Kenneth Simons acted as Chair.

Dr. Sheldon Wasserman returned to the room at 2:15 p.m.

**PETITION FOR ALCOHOL AND OTHER DRUG ABUSE ASSESSMENT IN THE
MATTER OF CASE NUMBER 11 MED 147 – DANIEL T. CABOT, D.O.**

MOTION: Dr. Kenneth Simons moved, seconded by Mr. Jim Barr, to find that the results of an alcohol and other drug abuse assessment may be useful to the Board at hearing where the issues include a determination of whether the Respondent, Daniel T. Cabot, D.O. presents a risk of harm to patients and, if so, possible discipline to protect the public and rehabilitate the Respondent. The Board therefore grants the Petition for an Alcohol and Other Drug Abuse Assessment pursuant to Wis. Stat. sec. 448.02(3)(b) and orders such assessment on the terms set forth in the proposed Order. Motion carried unanimously.

**DELIBERATION OF PROPOSED STIPULATIONS AND FINAL DECISIONS AND
ORDERS**

MOTION: Dr. Kenneth Simons moved, seconded by Mr. Jim Barr, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order in the disciplinary proceedings against Michael J. Panzer, M.D. (11 MED 312.) Motion carried unanimously.

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Gene Musser, to adopt the Findings of Fact, Conclusions of Law, Final Decision and Order in the disciplinary proceedings against Barbara G. Nelson, M.D. (12 MED 418.) Motion carried unanimously.

DELIBERATION OF ADMINISTRATIVE WARNINGS

MOTION: Dr. Timothy Westlake moved, seconded by Mr. Greg Collins, to issue an administrative warning in the matter of case number 12 MED 230. Motion carried unanimously.

MOTION: Mr. Greg Collins moved, seconded by Dr. Timothy Westlake, to issue an administrative warning in the matter of case number 12 MED 419. Motion carried.

Dr. Sheldon Wasserman abstained from voting in the matter of case number 12 MED 419. Dr. Kenneth Simons acted as Chair.

MOTION: Dr. Kenneth Simons moved, seconded by Mr. Greg Collins, to issue an administrative warning in the matter of case number 12 MED 436. Motion carried.

Dr. Sheldon Wasserman abstained from voting in the matter of case number 12 MED 419. Dr. Kenneth Simons acted as Chair.

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Russell Yale, to issue an administrative warning in the matter of case number 13 MED 021. Motion carried.

Dr. Timothy Westlake recused himself from deliberation and voting in the matter of case number 13 MED 021.

CASE CLOSINGS

Dr. Gene Musser left the meeting at 2:25 p.m.

MOTION: Dr. Timothy Westlake moved, seconded by Dr. Timothy Swan, to close the case #12 MED 168 for No Violation (NV). Motion carried unanimously.

MOTION: Dr. Timothy Swan moved, seconded by Dr. Kenneth Simons, to close the case #12 MED 372 for No Violation (NV). Motion carried unanimously.

MOTION: Dr. Timothy Westlake moved, seconded by Dr. Russell Yale, to close the case #12 MED 414 for No Violation (NV). Motion carried unanimously.

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Timothy Swan, to close the case #12 MED 328 for Prosecutorial Discretion (P2). Motion carried unanimously.

MOTION: Dr. Kenneth Simons moved, seconded by Mr. Jim Barr, to close the case #12 MED 170 for Insufficient Evidence (IE). Motion carried unanimously.

RATIFY ALL LICENSES AND CERTIFICATES

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Timothy Swan, to ratify all licenses and certificates as issued. Motion carried unanimously.

RECONVENE TO OPEN SESSION

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Timothy Swan, to reconvene into open session. Motion carried unanimously.

The Board reconvened into Open Session at 2:39 p.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION, IF VOTING IS APPROPRIATE

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Timothy Swan, to affirm the motions made in closed session regarding Yücel Yankol, M.D. Motion carried unanimously.

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Timothy Swan, to affirm all other motions made in closed session. Motion carried unanimously.

ADJOURNMENT

MOTION: Dr. Kenneth Simons moved, seconded by Dr. Timothy Swan, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 2:41 p.m.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Shawn Leatherwood		2) Date When Request Submitted: 05/01/2013 <small>Items will be considered late if submitted after 4:30 p.m. and less than:</small> <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Medical Examining Board			
4) Meeting Date: 05/15/2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Draft of proposed Occupational Therapists Rules relating to practice standards.	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: The Occupational Therapist Affiliated Credentialing Board, pursuant to s. 15.085 (b) 1., Stats., submits this proposed rule draft for the Medical Examining Board's review and consideration. The MEB may make recommendations for the OT Board's consideration.			
11) Authorization			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: <ol style="list-style-type: none"> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. 			

STATE OF WISCONSIN
OCCUPATIONAL THERAPISTS
AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF RULE-MAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	OCCUPATIONAL THERAPISTS
OCCUPATIONAL THERAPISTS	:	AFFILIATED CREDENTIALING
AFFILIATED CREDENTIALING	:	BOARD
BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Occupational Therapists Affiliated Credentialing Board to repeal OT 2.07 (5) and 3.06 (b) (Note); to amend OT 2.03 (2) (e), OT 2.03 (2) (j), OT 2.07 (6), OT 3.02, OT 3.05, OT 4.02 (2), OT 4.02 (2) (a) and (b), OT 4.03 (1) (a), OT 4.03 (2) (title), OT 4.03 (2) (c), (d), and (e), OT 4.03 (3) (a), (b), and (f), OT 4.03 (5) (b) and (c), OT 4.03 (6) (b) and (c), OT 4.05 (6) and (7) (a); to repeal and recreate OT 1.02; and to create OT 3.06 (r) and OT 4.02 (2) (j) to (q) relating to practice requirements.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

s. 448.965, Stats.

Statutory authority:

ss. 15.085 (5) (b), 227.11 (2) (a), 448.965, Stats.

Explanation of agency authority:

The Occupational Therapists Affiliated Credentialing Board (Board) is authorized generally, pursuant to s. 15.08 (5) (b), Stats., to promulgate rules for guidance within its profession. The Board may also promulgate rules that interpret statutes they enforce or administer per s. 227.11 (2) (a), Stats. Section 448.965 (2), Stats., is administered by the Occupational Therapist Affiliated Credentialing Board and provides, “[t]he affiliated credentialing board may promulgate rules that define the scope of practice of occupational therapy or the scope of assisting in the practice of occupational therapy.” The proposed rule seeks to modernize practice standards captured in the current rules. Therefore, the Board is authorized both generally and specifically to promulgate the proposed rules.

Related statute or rule:

Wis. Admin. Code chs. 1, 2, 3 and 4

Plain language analysis:

The Occupational Therapist Affiliated Credentialing Board reviewed its rules and determined that the rules were outdated. The Board identified several key areas in the rules that were not typical of practice within the profession. The Board was also prompted by the American Occupational Therapy Association (AOTA). The AOTA changed the definition of Occupational Therapy Practice for the AOTA Model Practice Act in April of 2011. The Board seeks to incorporate some of the language from the AOTA Model Practice Act within the proposed rules. Ultimately, the Board seeks to institute changes that will update the current code language with current practices within the profession.

SECTION 1. recreated the definition provisions and defines areas of occupation occupational performance skills, occupational performance contexts and environment as well as other terms.

SECTION 2. increases the time period from 3 to 5 years that an applicant may be required to complete an oral examination, if they have not practiced prior to their application.

SECTION 3. amends OT 2.03 (2) (j) by omitting the term "been".

SECTION 4. repeals OT 2.07 (5).

SECTION 5. amends language regarding expiration of temporary licensure.

SECTION 6. amends the biennial renewal date from November 1 to June 1.

SECTION 7. repeals the note found in the corresponding table.

SECTION 8. creates a provision which was added to the table.

SECTION 9. adds terms to the list of occupational therapy services.

SECTION 10. creates additional provisions to the occupational therapy services listed in s. 4.02 (2) (j).

SECTION 11. adds language to OT 4.03 (1) (a) specifying the objectives of occupational therapy.

SECTION 12. amends the title in OT 4.03 (2) by striking the term "physician".

SECTION 13. removes terms and clarifies the distinction between orders and referrals.

SECTION 14. adds terms that distinguish between health care provider and health care professional.

SECTION 15. clarifies the terms related to program implementation.

SECTION 16. amends the provision by adding terms that specify the support system that should be in place for discontinuation of services.

SECTION 17. deletes unnecessary language.

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

None.

Comparison with rules in adjacent states:

Illinois: The Illinois Occupational Therapy Practice Act ILL. Admin. Code tit. 68 §1315.90 governs OT practice in Illinois. The code sets forth provisions for modalities in occupational therapy, supervision of occupational therapy assistants and several other sections that the Wisconsin rules do not cover.

Iowa: Iowa administrative code defines occupational therapy practice which includes physical agent modalities 645 IAC 206.1, and sets forth a Code of Ethics for occupational therapist 645 IAC 208.1, and grounds for discipline. 645 IAC 209. Other topics covered include continuing education and supervision requirements.

Michigan: In Michigan Occupational Therapists are governed under the Public Health Code Act 368 of 1978 MCL and the Department of Consumer and Industry Services. Michigan statutes and administrative code do not set forth provisions regarding modalities in occupational therapy or practice and supervision nor does it outline topic areas for the completion of continuing education credits as the current Wisconsin rule does.

Minnesota: Minnesota statutes govern the scope of practice for Occupational Therapists in the state. Minn. Stat. §§ 148.601 -148.6450 The provisions cover such topics as physical agent modalities and supervision of occupational therapy assistants similar to the current Wisconsin rules.

Summary of factual data and analytical methodologies:

The impetus for the proposed rule was a review by the Board which indicated that there was a gap between terminology currently being used in the profession and the language that was in the rule. The Board decided to address this issue by drafting the proposed rule. No other factual data or analytical methodologies were used.

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

These proposed rules will not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Fiscal Estimate and Economic Impact Analysis:

The Department is currently soliciting information and advice from businesses, local government units and individuals in order to prepare the Fiscal Estimate and the Economic Impact Analysis.

Effect on small business:

These proposed rules will 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:

Shawn Leatherwood 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.

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

Comments may be submitted to Shawn Leatherwood 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 Shancethea.L Leatherwood@wisconsin.gov. Comments must be received on or before * to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. OT 1.02 is repealed and recreated to read:

OT 1.02 (1) "Activity demands" means the specific features of an activity that influence the type and amount of the effort required to perform the activity. Activity demands include the specific objects, space demands, social demands, sequence and timing, required actions and performance of skills body functions and body structures.

(2) "Areas of occupation" means the functional abilities that occupational therapy addresses in the areas of activities of daily living such as instrumental activities of daily

living , rest and sleep, educational activities , work and vocational activities, play leisure and social participation.

(3) “Assessment” is a component part of the evaluation process, and means the process of determining the need for, nature of, and estimated time of treatment at different intervals during the treatment, determining needed coordination with or referrals to other disciplines, and documenting these activities.

(4) “Board” means the occupational therapists affiliated credentialing board.

(5) “Body functions” means the physiological functions of body systems , including mental, sensory, pain, neuromusculoskeletal, movement, cardiovascular, hematological, immunological, respiratory, voice , speech, digestive, metabolic, endocrine, genitourinary, reproductive, lymphatic, integumentary and related structures.

(6) “Body structures” means anatomical parts of the body, such as organs, limbs, and their components that support body functions.

(7) “Client factors” means values, beliefs, and spirituality, body functions, and body structures that reside within the client and may affect performance in areas of occupation.

(8) “Consultation” means a work–centered, problem–solving helping relationship in which knowledge, experience, abilities and skills are shared with client, family, caregivers, and other professionals, including physicians, in the process of helping to habilitate or rehabilitate through the use of occupational therapy.

(9) “Entry–level” means the person has no demonstrated experience in a specific position, such as a new graduate, a person new to the position, or a person in a new setting with no previous experience in that area of practice.

(10) “Evaluation” means the process of obtaining and interpreting data necessary for understanding the individual system or situation. This includes planning for and documenting the evaluation process, results and recommendations, including the need for intervention and potential change in the intervention plan.

(11) “Experienced” means demonstrated competence in the performance of duties in a given area of practice.

(12) “Habilitation” means an occupational therapy intervention designed for the education, training or support services provided to individuals to assist them in acquiring and maintaining skills not yet gained or learned, thus enabling them to learn, practice and refine skills needed for independent living, productive employment activity and community participation.

(13) "Level I fieldwork" means an integral part of didactic courses and includes varied learning experiences. Students are supervised in observation and assistance with clients during short term contacts.

(14) "Level II fieldwork" means extended fieldwork which emphasizes the application and integration of academically acquired knowledge and skills in the supervised delivery of occupational therapy services to clients.

(15) "Occupational performance skills" means the skills and abilities that an individual demonstrates in the actions they perform including sensorimotor, sensory- perceptual, emotional regulation, cognition, communication, and social skills.

(16) "Occupational performance contexts and environments" means a variety of interrelated conditions within and surrounding the client that influence an individual's engagement in desired or required occupational performance including personal (age, gender, education; cultural, (customs, beliefs, behaviors); temporal (maturation, time of day or year, duration, stage of disability); physical (natural and built environments); virtual (communication which occurs absent of physical contact via simulated, real time or near time activity; social (relationships and expectations of persons groups and systems.

(17) "Occupational therapist educational program" means an educational program and supervised internships in occupational therapy recognized by the board and accredited by the Accreditation Council for Occupational Therapy Education or a program approved by the World Federation of Occupational Therapy.

(18) "Occupational therapy assistant educational program" means an educational program and supervised internships in occupational therapy recognized by the board and accredited by the Accreditation Council for Occupational Therapy Education or a program approved by the World Federation of Occupational Therapy.

(19) "Order" means the practice of identifying the need for occupational therapy education and intervention and delegating the responsibility to perform the evaluation and intervention to an occupational therapist.

(20) "Performance patterns" means patterns of behavior related to an individual's daily life activities that are habitual or routine.

(21) "Prevention" means the fostering of normal development, promoting health and wellness sustaining and protecting existing functions and abilities, preventing disability or supporting levels of restoration or change to enable individuals to maintain maximum independence.

(22) "Referral" means the practice of requesting occupational therapy services.

(23) "Rehabilitation" means the process of treatment and education to restore a person's ability to live and work as normally as possible after a disabling injury or illness.

(24) "Screening" means the review of occupational performance skills in natural environments, educational or clinical settings to determine the significance of discrepancy between current performance and expected level of performance, which may be done in consultation with a physician.

(25) "Service competence" means the determination made by various methods that 2 people performing the same or equivalent procedures will obtain the same or equivalent results.

(26) "Supervision" is a cooperative process in which 2 or more people participate in a joint effort to establish, maintain and elevate a level of competence and performance. One of the participants, the supervisor, possesses skill, competence, experience, education, credentials, or authority in excess of those possessed by the other participant, the supervisee.

SECTION 2. OT 2.03 (2) (e) is amended to read:

OT 2.03 (2) (e) Has not practiced occupational therapy for a period of ~~3~~ 5 years prior to application, unless the applicant has graduated from a school of occupational therapy within that period. Practice for the purposes of this paragraph includes direct client treatment and education, occupational therapy instruction in an occupational therapy academic program recognized by the board, occupational therapy research, and service in administrative positions for health care providers or governmental bodies with responsibility relating to occupational therapy.

SECTION 3. OT 2.03 (2) (j) is amended to read:

OT 2.03 (2) (j) Has ~~been~~ graduated from an occupational therapy school not approved by the board.

SECTION 4. OT 2.07 (5) is repealed.

SECTION 5. OT 2.07 (6) is amended to read:

OT 2.07 (6) A temporary license shall remain in effect for 6 months and may not be renewed.

SECTION 6. OT 3.02 and 3.05 are amended to read:

OT 3.02 Registration required; method of registration. Each licensee shall register biennially with the board. Prior to ~~November 1~~ June 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 an application form for registration. Each licensee shall complete the application form and return it with the required fee to the department. 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.

OT 3.05 Failure to be registered. Failure to renew a license by ~~November 1~~ June 1 of odd numbered years shall cause the license to lapse. A licensee who allows the license to lapse may apply to the board for reinstatement of the license as follows:

SECTION 7. OT 3.06 (b) Table (Note) is repealed.

SECTION 8. OT 3.06 (r) Table is created to read:

Professional Development Activities	Professional Development Points
(r) Reimbursement or Ethics Courses	1 point per contact hour

SECTION 9. OT 4.02 (2) (a) and (b) are amended to read:

OT 4.02 (2) Occupational therapy ~~services~~ interventions include, but are not limited to the following:

OT 4.02 (2) (a) Screening, evaluating, developing, improving, sustaining or restoring skills in activities of daily living, work or productive activities, including instrumental activities of daily living, and play, ~~and~~ leisure activities, and rest and sleep education and social participation.

OT 4.02 (2) (b) Evaluating, developing, remediating, or restoring sensorimotor, neuromusculoskeletal, cognitive, or psychosocial components of performance skills.

SECTION 10. OT 4.02 (2) (j) to (q) are created to read:

OT 4.02 (2) (j) Therapeutic use of occupations, exercises, and activities.

(k) Training in self-care, self-management, health management and maintenance, home management, community work reintegration, and school activities and work performance.

(L) Therapeutic use of self, including one's personality, insights, perceptions and judgments, as part of the therapeutic process.

(m) Assessment, recommendation, and training in techniques to enhance functional mobility, including management of wheelchair and other mobility devices.

(n) Low vision rehabilitation

(o) Driver rehabilitation and community mobility

(p) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(q) Facilitating the occupational performance of groups, populations, or organizations through the modification of environments and adaptation processes.

SECTION 11. OT 4.03 (1) (a) is amended to read:

OT 4.03 (1) (a) An occupational therapist, alone or in collaboration with an occupational therapy assistant, when practicing either independently or as a member of a treatment team, shall identify individuals who present deficits or declines in areas of occupation occupational performance areas skills and performance components patterns.

SECTION 12. OT 4.03 (2) (title) is amended to read:

OT 4.03 (2) REFERRAL AND PHYSICIAN ORDERS. (a) Evaluation, rehabilitation treatment, and implementation of treatment with individuals with specific medical conditions shall be based on an order from a physician, dentist or podiatrist, or any other qualified health care professional.

SECTION 13. OT 4.03 (2) (c), (d), and (e) are amended to read:

OT 4.03 (2) (c) Although ~~a referral~~ an order is not required, an occupational therapist or occupational therapy assistant may accept a referral for the purpose of providing services which include consultation, habilitation, screening, client education, wellness, prevention, environmental assessments, and work-related ergonomic services.

OT 4.03 (2) (d) ~~Physician orders~~ Orders shall be in writing. However, oral ~~referrals~~ orders may be accepted if they are followed by a written and signed order by the ~~referring physician~~ ordering professional within 72 hours from the date on which the client consults with the occupational therapist or occupational therapy assistant.

OT 4.03 (2) (e) ~~Physician order~~ Orders or referral from another health care ~~provider~~ professional is not required for evaluation or intervention if an occupational therapist or occupational therapy assistant provides services in an educational environment, including the child's home, for children and youth with disabilities pursuant to rules promulgated by the federal individuals with disabilities education act, the department of public instruction and the department of health services, or provides services in an educational environment for children and youth with disabilities pursuant to the code of federal regulations.

SECTION 14. OT 4.03 (3) (a), (b), and (f) are amended to read:

OT 4.03 (3) (a) The occupational therapist directs the evaluation process upon receiving ~~a physician~~ an order or referral from another health care ~~provider~~ professional. An occupational therapist alone or in collaboration with the occupational therapy assistant shall prepare an occupational therapy evaluation for each individual ~~referred~~ ordered for

occupational therapy services. The occupational therapist interprets the information gathered in the evaluation process.

OT 4.03 (3) (b) The evaluation shall consider the individual's medical, vocational, social, educational, family status, and personal and family goals, and shall include an assessment of how occupational performance ~~components~~ skills and occupational performance contexts influence the individual's functional abilities and deficits in occupational performance areas of occupation, patterns, contexts and environments.

OT 4.03 (3) (e) Evaluation results shall be communicated to the ~~referral source~~ ordering professional and to the appropriate persons in the facility and community.

OT4.03 (4) (d) In developing the program, the occupational therapist alone or in collaboration with the occupational therapy assistant shall also collaborate, as appropriate, with the individual, family, other health care professionals and community resources; shall select the media, methods, environment, and personnel needed to accomplish the goals; and shall determine the frequency and duration of occupational therapy ~~services~~ interventions provided.

SECTION 15. OT 4.03 (5) (b) and (c) are amended to read:

OT 4.03 (5) (b) The individual's areas of occupations occupational performance areas skills and occupational performance ~~components~~ patterns shall be routinely and systematically evaluated and documented.

OT 4.03 (5) (c) Program modifications shall be formulated and implemented consistent with the changes in the individual's occupational performance areas skills, occupational performance ~~components~~ patterns and occupational performance contexts and environments.

SECTION 16. OT 4.03 (6) (b) and (c) is amended to read:

OT 4.03 (6) (b) A comparison of the initial and current state of functional abilities and deficits in areas of occupation, occupational performance areas skills and occupational performance ~~components~~ patterns shall be made and documented.

OT 4.03 (6) (c) A discharge plan shall be prepared, consistent with the ~~services~~ interventions provided, the individual's goals, and the expected prognosis. Consideration shall be given to the individual's occupational performance contexts and environments including appropriate community resources for referral, and environmental factors or barriers that may need modification.

SECTION 17. OT 4.05 (6) and (7) (a) is amended to read:

OT 4.05 (6) An occupational therapist or occupational therapy assistant may delegate to non-licensed personnel duties or functions ~~other than maintenance or restorative services to the clients~~, including but not limited to the following services:

OT 4.05 (7) (a) Interpretation of referrals or prescriptions orders for occupational therapy services.

SECTION 18. 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
Occupational Affiliated Credentialing
Board

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Matthew C. Niehaus		2) Date When Request Submitted: 4/11/2013 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others 	
3) Name of Board, Committee, Council, Sections: Medical Examining Board			
4) Meeting Date: 4/19/2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Invitation to Participate on a Panel on Opioid Prescribing - November 1, 2013	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Review request for Dr. Gene Musser to attend.			
11) Authorization			
Matthew C. Niehaus			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

Niehaus, Matt - DSPS

From: Messina, Monica L.
Sent: Monday, April 29, 2013 2:45 PM
To: 'Gene Musser'
Subject: RE: INVITATION to participate on a panel on Opioid Prescribing - Nov. 1

Dear Dr. Musser:

I am the CME Coordinator at Meriter Hospital, and I am contacting you to invite you to participate in a state-wide training for the safe prescribing of opioids to take place on Nov. 1, 2013 here in Madison. Dr. Geoff Priest recommended you as the representative of the State Licensing Board.

This effort comes out of a Healthcare Task Force to prevent opioid overdoses/accidental deaths that was organized by the non-profit, Safe Communities. Geoff is the physician spokesperson for the group and had been charged with providing education for area prescribers in an effort to reduce the number of deaths in Dane County ascribed to opioid overdoses. We have partnered with Boston University to bring in their grant-funded Scope of Pain curriculum. That education is then followed by a 1-2 hour discussion panel made of representatives from local agencies and experts. Boston University especially wants the State Medical Licensing Board to be represented on the panel.

[Visit this link for more info. from Boston University's SCOPE of Pain Program www.scopeofpain.com<<http://www.scopeofpain.com>]

Geoff recommended that we include you as the representative from the State Board and Dr. Tim Bartholow as the representative from the Wisconsin Medical Society.

Below is the thread of preliminary planning messages orchestrated by Cheryl Wittke, director of Safe Communities.

I hope you are interested and available to participate on the panel.

I look forward to hearing from you soon.

Thank you,



Monica L. Messina
Office of Continuing Professional Development

Meriter Hospital
202 S. Park St.
231 McConnell Hall
Madison, WI 53715

Meriter Medical Staff Members: visit <http://My.Meriter.com/go/cpd> for CME offerings at Meriter.

From: Cheryl Wittke
Sent: Thursday, April 25, 2013 2:17 PM
To: Matthews, David S

Cc: Messina, Monica L.; _____

Subject: FW: PICK A DATE PLEASE: State specific Opioid trainings from Boston University

Hello! We are very fortunate to have been selected as a site for a clinician training called Scope of Pain. At the end of this email is a link to the program and a bit more info.

Part of our commitment as a training site is to bring together a multi-disciplinary panel of state leaders working on reducing opioid overdose deaths and hospitalizations. We will be back in touch with further detail about what we'd ask of you (or whomever you think is most appropriate to serve as a panelist from your agency), but in the meantime we are anxious to set the date! If you're at least intrigued by the prospect of serving on this panel, could I ask if you would please check out options below, review your calendars and let me know which would or wouldn't work for you (or your agency designee)?

Our friends at Meriter Health Systems are taking the lead on this – below are dates Monica Messina, Meriter's CME Coordinator, has identified as prospects. Could you please respond to me by Monday? Thanks! Cheryl 256-6713

From: Messina, Monica L. _____

Sent: Thursday, April 25, 2013 8:05 AM

To: 'Kosseff MD, Andy'; Cheryl Wittke; Priest, Geoffrey; Ranheim, Cate; Slotten, Shawn

Cc: Igic, Petar G.

Subject: PICK A DATE PLEASE: State specific Opioid trainings from Boston University

Hi All:

I have been communicating with our Boston U. contact, Ilana Hardesty, to find a date.

We are looking for a **Friday or Saturday in October or early November (or maybe Saturday, Sept. 14)**

We will avoid the home football weekends. So these are the options.

September 14

October 4-6 is Dairy Expo – to be avoided.

October 19

November 2

November 23 (week before Thanksgiving)

- **Your conflicts** for any of these weekends?
- **FRIDAY OR SATURDAY?**
My informal poll of colleagues resulted in a preference for Friday over Saturday for clinicians.
What about those who will be on the multi-disciplinary panel?
Your opinions?

ON HOLD: Friday, November 1 - [Monona Terrace](#):

[if they schedule Freak Fest this weekend, it will be on Saturday night]

From my colleague at UW, I have been told that Monona Terrace is really an optimal place for a big event.

Monona Terrace has no Saturdays available.

Saturdays: Ilana's event planner is looking into finding a venue on the away-game Saturdays.

Thanks for helping with this decision,



Monica L. Messina
Office of Continuing Professional Development

Meriter Hospital
202 S. Park St.
231 McConnell Hall
Madison, WI 53715

Meriter Medical Staff Members: visit <http://My.Meriter.com/go/cpd> for CME offerings at Meriter.

Boston University, Ilana Hardesty, the Program Operations Manager, for the SCOPE of Pain Program
www.scopeofpain.com<<http://www.scopeofpain.com>>

Their grant will allow them to come to 10 States with this training. So far they have 2 States lined up.

They want to try to get the remaining States on the schedule within the year.

So far, they find it works well to have contacts with each State's Medical Board to coordinate the visit and incorporate State-specific information.

The program they are offering is based on the success that they had in Massachusetts:

Part I: 3 hour education on safe opioid prescribing for 200 people. This content closely follows their online module, so Ilana suggests that one of our physicians take the online module (3 hours CME credit) to evaluate the content.

Part II: 2 hours with a panel of representatives from State agencies such as Public Health, DEA, State Police, Pharmacy and Prescription Drug Monitoring, a Wisconsin physician to address state-specific epidemiology, etc. Ilana says that initially physicians "fear" the presence of the DEA and the police, but then are very satisfied with how much they learn about the other agencies' work and issues and how to collaborate. Also, since in Mass. there was only a 7% compliance with registering with the prescription drug monitoring database, they were able to sign physicians up at the meeting.

Part III: for a limited number of attendees, there will be a the Train-the-Trainer education session with the goal that these Trainers will then bring the education to the more rural areas of the State.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Matthew C. Niehaus		2) Date When Request Submitted: 5/07/2013	
		Items will be considered late if submitted after 4:30 p.m. and less than: ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others	
3) Name of Board, Committee, Council, Sections: Medical Examining Board			
4) Meeting Date: 5/15/2013	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Board Retreat	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: Board Retreat Topics: Physician Discipline Disciplinary Guidelines (North Carolina & Ohio Guidelines Included in Packet)			
11) Authorization			
Matthew C. Niehaus			
Signature of person making this request			Date
Supervisor (if required)			Date
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

THE NORTH CAROLINA MEDICAL BOARD
DISCIPLINARY GUIDELINES

These disciplinary guidelines have been devised to promote consistency in sanctions imposed by the Board, to lend credibility to the disciplinary process and to aid the Board in their ultimate goal of public protection. They are used for reference and guidance only and are not binding on the Board. The Board recognizes that each case has individual facts and circumstances that distinguish it from other cases of the same nature and the Board agrees to consider all mitigating and aggravating factors specific to a case before determining the appropriate sanction. These guidelines will be used to neutralize unwarranted inconsistencies and improve the efficiency of the Board.

VIOLATIONS

1. Improper Prescribing, Dispensing, or Administering of Controlled Substances
2. A Violation of a Law Involving the Practice of Medicine
3. Criminal Acts or Convictions
4. Practicing Below the Minimum Standard of Care
5. Boundary Violations
6. Inadequate Record Keeping
7. Ethics Violations
8. Out of State Adverse Actions
9. Inability to Practice Due to an Addiction
10. Violation of Consent Order
11. Fraud, Misrepresentation, or Deception
12. Failure to file the Appropriate Paperwork with the Board.
13. Failure to comply with a Board Order.

IMPROPER PRESCRIBING, DISPENSING OR ADMINISTERING CONTROLLED SUBSTANCES.

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Private Letter of Concern

A VIOLATION OF A LAW INVOLVING THE PRACTICE OF MEDICINE

FELONY

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Indefinite Suspension of license

MISDEMEANOR

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Public Reprimand

CRIMINAL ACTS AND CONVICTIONS

FELONY

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Indefinite suspension of license

MORAL TURPITUDE

Maximum Penalty: Revocation of medical license

Minimum Penalty: Reprimand

MISDEMEANOR

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Private Letter of Concern

PRACTICING BELOW THE MINIMUM STANDARD OF CARE

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Stayed suspension of license

BOUNDARY VIOLATIONS

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Stayed Suspension of license

INADEQUATE RECORDKEEPING

Presumptive Maximum Discipline: Indefinite Suspension of license

Presumptive Minimum Discipline: Private Letter of Concern

ETHICS VIOLATIONS

Presumptive Maximum Discipline: Indefinite Suspension of license

Presumptive Minimum Discipline: Private Letter of Concern

OUT OF STATE ADVERSE ACTIONS

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Private Letter of Concern

INABILITY TO PRACTICE DUE TO AN ADDICTION

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Suspension of license

VIOLATION OF A CONSENT ORDER

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Stayed Suspension of license

FRAUD, MISREPRESENTATION OR DECEPTION

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Public Reprimand

FAILURE TO FILE THE APPROPRIATE PAPERWORK WITH THE BOARD

Presumptive Maximum Discipline: Public Reprimand

Presumptive Minimum Discipline: Private Letter of Concern

FAILURE TO COMPLY WITH A BOARD ORDER

Presumptive Maximum Discipline: Revocation of license

Presumptive Minimum Discipline: Public Reprimand

After a violation of the North Carolina Medical Practice Act has been established, the Board may consider aggravating and mitigating circumstances in deciding the appropriate discipline. The aggravating and mitigating factors set forth below are some of the factors the Board may consider. The Board may take into consideration other factors in aggravation or mitigation offered by the parties.

AGGRAVATING FACTORS

1. Prior disciplinary actions
2. Patient harm
3. Dishonest or selfish motive
4. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process
5. Vulnerability of victim
6. Refusal to admit wrongful nature of conduct
7. Willful or reckless misconduct
8. Pattern of misconduct (repeated instances of the same misconduct)
9. Multiple offenses (more than one instance of different misconduct)

MITIGATING FACTORS

1. Absence of a prior disciplinary record
2. No direct patient harm
3. Absence of a dishonest or selfish motive
4. Full cooperation with the Board
5. Physical or mental disability or impairment
6. Rehabilitation or remedial measures
7. Remorse
8. Remoteness of prior discipline

**THE STATE MEDICAL BOARD OF OHIO
DISCIPLINARY GUIDELINES**

(Revised December 2011)

Disciplinary Guidelines are primarily for the Board's reference and guidance. They are subject to revision at the Board's discretion without notice to the public. Disciplinary Guidelines are intended to promote consistency in Board-imposed sanctions, but are not binding on the Board. The Board recognizes that individual matters present unique sets of circumstances which merit individual consideration by the Board.

CATEGORIES OF VIOLATIONS

Category	Title	Page
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Category II	Minimal Standards of Care	7
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APPENDICES

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Appendix B	Aggravating and Mitigating Factors	27

**CATEGORY I: IMPROPER PRESCRIBING, DISPENSING, OR ADMINISTERING
OF DRUGS**

- A. Prescribing, dispensing, or administering of any drug for excessive periods of time and/or in excessive amounts.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Definite suspension, min. 90 days; subsequent probation, min. 2 years, to include prescribing course

- B. (Reserved)

- C. (Reserved)

- D. Failing to keep patient records of substances prescribed, dispensed or administered; and/or failing to perform appropriate prior examination and/or failure to document in the patient record performance of appropriate prior examination.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand; probation, min. 2 years, to include medical-recordkeeping course

- E. (Reserved)

- F. Inappropriate purchasing, controlling, dispensing, and/or administering of any drug.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Definite suspension, min. 60 days; subsequent probation, min. 2 years

- G. Failure to use acceptable methods in selection of drugs or other modalities.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- H. (Reserved)

- I. Selling, prescribing, dispensing, giving away, or administering any drug for other than a legal and legitimate therapeutic purpose and/or selling, prescribing, dispensing, giving away, or administering any drug in exchange for sexual favors.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- J. (Reserved)

- K. (Reserved)

- L. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug related felony, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- M. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug-related misdemeanor, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 2 years.

- N. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug related felony where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- O. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a drug-related misdemeanor where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 30 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- P. Utilizing a controlled substance in the treatment of a family member or self in violation of Section 4731-11-08, Ohio Administrative Code.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand; probation, min. 2 years, to include appropriate medical-education course

Review/Revision History:

Sections I.M, I.O, and I.P: 12/10

Sections I.A through I.K: 10/10

Sections I.L and I.N: 7/10

CATEGORY II: MINIMAL STANDARDS OF CARE

A. Departure from or failure to conform to minimal standards of care.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation, min. 3 years

B. Sexual misconduct within practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement;
subsequent probation as appropriate

**NOTE: WHERE APPROPRIATE, PERMANENT LIMITATIONS AND RESTRICTIONS
MAY ALSO BE IMPOSED.**

Review/Revision History:

Sections II.A and II.B: 1/11

CATEGORY III: FRAUD, MISREPRESENTATION, OR DECEPTION

A. Fraud in passing examination.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Revocation of certificate or denial of application (minimum required by statute)

B. (Reserved)

C. (Reserved)

D. Publishing a false, fraudulent, deceptive, or misleading statement.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year

E. (Reserved)

F. Obtaining, or attempting to obtain, anything of value by fraudulent misrepresentations in the course of practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement; subsequent probation, min. 2 years

G. Deceptive advertising.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year

- H. Representing, with purpose of obtaining compensation or advantage, that incurable disease can be cured.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 3 years, with conditions for reinstatement to include SPEX and personal/professional ethics courses; subsequent probation, min. 5 years, including requirements for a practice plan and monitoring physician prior to resuming practice

NOTE: SEE APPENDIX A IF VIOLATION BY LICENSURE APPLICANT.

Review/Revision History:

Sections III.A through III.H: 2/11

CATEGORY IV: ETHICS VIOLATIONS

- A. Division of fees for referral of patients, or receiving a thing of value for specific referral of patient to utilize particular service or business.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year, with conditions for reinstatement; subsequent probation as appropriate

- B. Code of ethics violation.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand

- C. Willfully betraying a professional confidence.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 1 year, to include condition of successfully completing appropriate ethics course(s)

NOTE: SEE CATEGORY II PENALTIES FOR SEXUAL MISCONDUCT WITHIN PRACTICE, AND CATEGORY III PENALTIES FOR FRAUDULENT ACTS.

Review/Revision History:

Sections IV.A through IV.C: 5/11

CATEGORY V: ACTIONS BY OTHER STATES OR ENTITIES

Limitation, revocation, suspension, acceptance of license surrender, denial of license, refusal to renew or reinstate a license, imposition of probation, or censure or other reprimand, by another jurisdiction; action against clinical privileges by Department of Defense or Veterans Administration; or termination or suspension from Medicare or Medicaid.

Maximum Penalty: Correspond to maximum penalty in Ohio for type of violation committed

Minimum Penalty: Correspond to minimum penalty in Ohio for type of violation committed

Review/Revision History:

Category V: 5/11

CATEGORY VI: UNAUTHORIZED PRACTICE

- A. Practice during suspension imposed by Board order.
- Maximum Penalty: Permanent revocation of certificate or permanent denial of application
- Minimum Penalty: Permanent revocation of certificate or permanent denial of application
- B. Applicant's prior practice without license or registration as physician assistant, anesthesiologist assistant, or radiologist assistant.
- Maximum Penalty: Denial of licensure or P.A./A.A./R.A. registration with conditions for any future application
- Minimum Penalty: Denial of licensure or P.A./A.A./R.A. registration
- C. Aiding and abetting unlicensed practice or practice by unregistered physician assistant, anesthesiologist assistant, or radiologist assistant.
- Maximum Penalty: One-year suspension; subsequent 2-year probation including requirement of annual report of utilization of employee or P.A./A.A./R.A.
- Minimum Penalty: Suspension for 30 days; subsequent 2-year probation including requirement of annual report of utilization of employee or P.A./A.A./R.A.
- D. Practice outside scope of license or registration.
- Maximum Penalty: Permanent revocation of certificate or permanent denial of application
- Minimum Penalty: 30-day suspension
- E. Supervising a physician assistant, anesthesiologist assistant, or radiologist assistant in the absence of an approved supervisory plan and approved supervision agreement.
- Maximum Penalty: Permanent revocation of certificate or permanent denial of application
- Minimum Penalty: Suspension for 90 days

- F. Practice of a physician assistant, anesthesiologist assistant, or radiologist assistant in the absence of an approved supervisory plan and an approved supervision agreement.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 90 days

- G. Permitting a physician assistant, anesthesiologist assistant, or radiologist assistant to perform services as a P.A., A.A., or R.A. in a manner that is inconsistent with the supervisory plan or special services plan under which that P.A./A.A./R.A. practices.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation (non-appearing), min. 1 year

- H. Practice of a physician assistant, anesthesiologist assistant, or radiologist assistant in a manner that is inconsistent with the supervisory plan or special services plan under which that P.A./A.A./R.A. practices.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Probation (non-appearing), min. 1 year

- I. Permitting a physician assistant to perform services as a physician assistant in a manner that is not in accordance with Chapter 4730 or other applicable chapter of the Revised Code and/or the rules adopted thereunder.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- J. Practice of a physician assistant in a manner that is not in accordance with Chapter 4730 or other applicable chapter of the Revised Code and/or the rules adopted thereunder.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 3 years

- K. Failure to timely report termination of a physician assistant supervision agreement to the Board.

Maximum Penalty: Suspension for 2 years

Minimum Penalty: Reprimand

- L. Limited Practitioner Holding Self Out as Doctor or Physician in Violation of Rule 4731-1-03(D) and/or 4731-1-03(E), Ohio Admin. Code.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days; conditions for reinstatement to include eliminating the offending references from any advertising, internet sites, signs, business cards, stationery, and similar locations; subsequent probation, min. 2 years

NOTE: SEE CATEGORY VII PENALTIES FOR PRACTICE IN VIOLATION OF CONDITIONS OF LIMITATION PLACED BY THE BOARD

Review/Revision History:

Sections VI.A through VI.K: 5/11

Section VI.L: 12/11

CATEGORY VII: VIOLATION OF CONDITIONS OF LIMITATION

- A. Violation of practice or prescribing limitations placed by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. one year, with conditions for reinstatement; subsequent probation, min. 3 years

- B. Violation of conditions of limitation, other than practice prohibitions, placed by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. as appropriate, with conditions for reinstatement; subsequent probation, min. 3 years

Review/Revision History:

Sections VII.A and VII.B: 8/11

CATEGORY VIII: CRIMINAL ACTS OR CONVICTIONS

- A. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony committed in course of practice, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- B. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony not committed in course of practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 30 days, with conditions for reinstatement; subsequent 3 year probation

- C. Commission of act constituting a felony in this state, regardless of where committed, if related to practice, except where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Permanent revocation of certificate or permanent denial of application

- D. Commission of act constituting a felony in this state, regardless of where committed, if unrelated to practice.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 30 days, with conditions for reinstatement; subsequent 3 year probation

- E. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in course of practice or involving moral turpitude.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 180 days, with conditions for reinstatement; subsequent probation, min. 2 years

- F. Commission of act constituting a misdemeanor committed in course of practice or involving moral turpitude.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension for 30 days; subsequent probation, min. 2 years

- G. Plea of guilty to, judicial finding of guilt of, or judicial finding of eligibility for intervention in lieu of conviction for, a felony committed in course of practice, where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

- H. Commission of act constituting a felony in this state, regardless of where committed, if related to practice, where the underlying criminal conduct was directly related to a substance-related impairment of the respondent and was committed to obtain substance(s) solely for self-use.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application.

Minimum Penalty: 90 days of suspension in addition to the minimum penalty for the applicable guideline section under Category IX.

NOTE: SEE CATEGORY I PENALTIES FOR DRUG RELATED CONVICTIONS

Review/Revision History:

Sections VIII.B and VIII.D: 8/11

Sections VIII.E and VIII.F: 9/10

Sections VIII.A, VIII.C, VIII.G, and VIII.H: 7/10

CATEGORY IX: IMPAIRMENT OF ABILITY TO PRACTICE

- A. Initial Impairment and/or Less than One Year of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to:

- (1) All licensees holding an active certificate,
- (2) All licensees holding a previously active certificate that is currently expired/inactive/lapsed for any reason,
- (3) All applicants for licensure/reinstatement/restoration who have not demonstrated continuous current sobriety for at least one year since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, no minimum, with conditions for reinstatement; subsequent probation, minimum 5 years

- B. "Slip Rule": Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision), where all conditions set forth in Rule 4731-16-02(D), Ohio Administrative Code, have been met.

The Respondent will not be subjected to suspension or other formal discipline

- C. First Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); first relapse during or following treatment, and/or where all conditions set forth in Rule 4731-16-02(D), Ohio Administrative Code, have not been met.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 90 days following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- D. Second Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); second relapse during or following treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 1 year following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- E. Third Relapse: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision); third relapse during or following treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Indefinite suspension, min. 3 years following date of license suspension (mandated by administrative rule), with conditions for reinstatement; subsequent probation, min. 5 years

- F. Impairment, 1 - 5 Years of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to all applicants for licensure/reinstatement/restoration who have demonstrated continuous current sobriety for more than one year, but less than five years, since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent denial of application

Minimum Penalty: Application granted; subject to probation for a minimum term that, when added to the applicant's demonstrated period of continuous current sobriety, shall not be less than 5 years

- G. Impairment, 5+ Years of Sobriety: Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances (including the inability to practice in accordance with such standards without appropriate treatment, monitoring, or supervision).

This section applies to all applicants for licensure/reinstatement/restoration who have demonstrated continuous current sobriety for more than five years since the date of the applicant's discharge from treatment where the treatment was completed and conformed with board requirements.

Maximum Penalty: Permanent denial of application

Minimum Penalty: License may be granted/reinstated/restored without probation or other disciplinary action

- H. Mental/Physical Illness, Currently Unable To Practice: Inability to practice according to acceptable and prevailing standards of care by reason of mental or physical illness (including any mental disorder, mental illness, physical illness, or physical deterioration that adversely affects cognitive, motor, or perceptive skills).

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: If applicant: Granting of license subject to indefinite suspension, min. as appropriate; conditions for reinstatement; subsequent probation, min. 2 years
If licensee: Indefinite suspension, min. as appropriate; conditions for reinstatement; subsequent probation, min. 2 years

- I. Mental/Physical Illness, Currently Able To Practice Subject To Appropriate Treatment, Monitoring, Or Supervision: Inability to practice according to acceptable and prevailing standards of care by reason of mental or physical illness (including any mental disorder, mental illness, physical illness, or physical deterioration, that adversely affects cognitive, motor, or perceptive skills) without appropriate treatment, monitoring, or supervision.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: If applicant: Granting of license subject to probationary terms and conditions, min. 2 years
If licensee: Probation, min. 2 years

Review/Revision History:

Sections IX.A through IX.I: 9/11

CATEGORY X: C.M.E. REQUIREMENTS

- A. Failure to respond timely to C.M.E. audit, but requisite C.M.E. completed.

Maximum Penalty: Reprimand; subject to mandatory audits of compliance with CME requirements for the current CME acquisition period and for two full CME acquisition periods thereafter.

Minimum Penalty: Reprimand.

- B. Failure to complete C.M.E. as certified on renewal application.

Maximum Penalty: Reprimand; \$5,000.00 fine; indefinite suspension until any outstanding shortage of CME credits has been rectified; subject to mandatory audits of compliance with CME requirements during suspension (if any), for the current CME acquisition period at the time of reinstatement (or for current CME acquisition period if no suspension), and for two full CME acquisition periods thereafter.

Minimum Penalty: Reprimand; \$1,000.00 fine; indefinite suspension until any outstanding shortage of CME credits has been rectified; subject to mandatory audits of compliance with CME requirements during suspension (if any), for the current CME acquisition period at the time of reinstatement (or for current CME acquisition period if no suspension), and for two full CME acquisition periods thereafter.

- C. Failure to complete C.M.E. as certified on renewal application; repeat offense.

Maximum Penalty: \$5,000.00 fine; indefinite suspension, min. 90 days, with conditions for reinstatement; subject to mandatory audits of compliance with CME requirements during suspension, for the current CME acquisition period at the time of reinstatement, and for two full CME acquisition periods thereafter.

Minimum Penalty: \$3,000.00 fine; indefinite suspension, min. 60 days, with conditions for reinstatement; subject to mandatory audits of compliance with CME requirements during suspension, for the current CME acquisition period at the time of reinstatement, and for two full CME acquisition periods thereafter.

NOTE: IF FRAUDULENT MISREPRESENTATIONS (OTHER THAN FALSE CERTIFICATION OF COMPLETION) ARE MADE WITH RESPECT TO C.M.E., CATEGORY III PENALTY MAY BE APPROPRIATE IN ADDITION TO THE STANDARD C.M.E. PENALTY. A BIFURCATED ORDER MAY BE USED.

Review/Revision History:

Sections X.A through X.C: 10/11

CATEGORY XI: MISCELLANEOUS VIOLATIONS

- A. Violating or attempting to violate, directly or indirectly, or assisting in or abetting violation of, or conspiring to violate, the Medical Practices Act or any rule promulgated by the Board.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Correspond to minimum penalty for actual offense

- B. Violation of any abortion law or rule.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Reprimand

- C. Permitting name or certificate to be used when not actually directing treatment.

Maximum Penalty: Permanent revocation of certificate or permanent denial of application

Minimum Penalty: Suspension, 1 year; subsequent probation, min. 1 year

- D. Failure to cooperate in an investigation conducted by the Board.

Maximum Penalty: Indefinite suspension of license with conditions for reinstatement to include, at a minimum, full cooperation in the underlying investigation.

Minimum Penalty: Reprimand, as long as respondent has fully cooperated in the underlying investigation.

Review/Revision History:

Sections XI.A through XI.D: 10/11

APPENDIX A: APPLICABILITY OF GUIDELINES TO LICENSURE AND TRAINING CERTIFICATE APPLICANTS

The penalties specified in Categories I through XI are generally tailored to apply to violations of the Medical Practices Act by licensees. When applicants for licensure or training certificates are found to have committed like violations, the appropriate penalties will be formulated in terms of either grant, denial, or permanent denial of the application. A grant of a license or training certificate may be accompanied by limitation, suspension, requirements for reinstatement, probation, and/or reprimand, as appropriate, and should be proportionate to penalties imposed for licensees.

Review/Revision History:

11/11

APPENDIX B: AGGRAVATING AND MITIGATING FACTORS

After a violation has been established, the Board may consider aggravating and mitigating circumstances in deciding what penalty to impose. If the Board deems such circumstances sufficient to justify a departure from disciplinary guidelines, they should be specified during the Board's deliberations.

AGGRAVATION

Aggravation or aggravating circumstances are any considerations or factors which might justify an increase in the degree of discipline to be imposed. Aggravating factors may include, but are not limited to:

- (a) Prior disciplinary actions
- (b) Dishonest or selfish motive
- (c) A pattern of misconduct
- (d) Multiple violations
- (e) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process
- (f) Refusal to acknowledge wrongful nature of conduct
- (g) Adverse impact of misconduct on others
- (h) Vulnerability of victim
- (i) Willful or reckless misconduct
- (j) Use/abuse of position of trust, or of licensee status, to accomplish the deception, theft, boundaries violation, or other misconduct
- (k) Where an individual has a duty to disclose information to the Board, the extent of delay in disclosing all or part of the information, including the failure to self-report relapse immediately to the Board as required
- (l) Failure to correct misconduct after recognizing the existence of the problem/violation

MITIGATION

Mitigation or mitigating circumstances are any considerations or factors which might justify a reduction in the degree of discipline to be imposed. Mitigating factors may include, but are not limited to:

- (a) Absence of a prior disciplinary record
- (b) Absence of a dishonest or selfish motive
- (c) Isolated incident, unlikely to recur
- (d) Full and free disclosure to Board, when done in a timely manner (such as before discovery is imminent)

- (e) Physical or mental disability or impairment
(NOTE: IT IS THE BOARD'S STATED POLICY THAT IMPAIRMENT SHALL NOT EXCUSE ACTS WHICH RESULT IN CONVICTION OR WHICH POTENTIALLY HAVE AN ADVERSE IMPACT ON OTHER INDIVIDUALS.)
- (f) Interim rehabilitation or remedial measures
- (g) Remorse
- (h) Absence of adverse impact of misconduct on others
- (i) Remoteness of misconduct, to the extent that the passage of time between the misconduct and the Board's determination of the sanction is not attributable to the respondent's delay, evasion, or other acts/omissions
- (j) Absence of willful or reckless misconduct
- (k) Prompt correction of misconduct/problem after recognizing its existence.

Review/Revision History:

11/11

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