



MEDICAL EXAMINING BOARD
Room 121A, 1400 East Washington Avenue, Madison
Contact: Tom Ryan (608) 266-2112
January 15, 2014

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 record of the actions of the Board.

AGENDA

8:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A) Adoption of Agenda**
- B) Approval of Minutes of December 11, 2013 (7-12)**
- C) Presentation of Motion for Rehearing and Objections to Order Fixing Costs in the Matter of Disciplinary Proceedings against Bashir A. Sheikh, M.D. – Case Number 10 MED 201 – Order Number 0002781 (13-66)**
 - 1) 8:05 A.M. – APPEARANCE – Bashir A. Sheikh, M.D. and DLSC Attorney Kim Kluck**
- D) Administrative Updates**
 - 1) Staff Updates
 - 2) Study on the Potential Consolidation of the Department of Agriculture, Trade and Consumer Protection with the Department of Safety and Professional Services (DART) Report – Discussion of Findings and Recommendations **(67-196)**
 - 3) Board Member Training – February 28, 2014
 - 4) Election of Officers **(197-198)**
 - a) Chair
 - b) Vice Chair
 - c) Secretary

- 5) Appointment of Liaisons, Alternates, and Delegates
 - a) Replacement of Dr. Musser
 - b) Legal Services and Compliance Liaison and Alternate
 - c) Monitoring Liaison **(199-200)**
 - (1) Delegated Authority Motion
 - d) Credentialing Liaisons (two) and Alternates (two)
 - e) Professional Assistance Procedure Liaison and Alternate **(201-206)**
 - f) Legislative Liaisons (four)
 - g) Maintenance of Licensure Liaisons (two)
 - h) Office of Education and Exams Liaison
 - i) Continuing Education Liaison **(207-208)**
 - j) Website Liaison
 - k) Newsletter Liaison
 - l) Wisconsin Administrative Code Chapter MED 8 Liaison and Alternate

E) Legislative/Administrative Rule Matters:

- 1) Adoption of Rulemaking Order CR 12-005 relating to Physician Assistant Practice – Discussion and Action **(209-216)**
- 2) 2013 Wisconsin Act 111 and MED 18 Alternate Modes of Treatment – Review **(217-220)**
- 3) 165-MED 13.06 Continuing Education Audit Scope Statement and Timeline – Discussion and Consideration **(221-224)**

F) Federation of State Medical Boards (FSMB) Matters – Discussion and Consideration

- 1) Minimum Data Set (MDS) Pilot Implementation Project **(225-250)**
- 2) FSMB’s 102nd Annual Meeting – April 24-26, 2014 in Denver, Colorado **(251-256)**
 - a) Appointment of Delegate and Alternate and Authorize Travel
 - b) Appoint Executive Director Tom Ryan and Authorize Travel

G) Spring Newsletter Matters – Discussion

H) Speaking Engagements – Report(s) and Discussion

I) Licensing Committee Report

J) Open Meetings Law Review (257-302)

K) Screening Panel Report

L) Supervising Physician : Physician Assistant Ratio – Requesting Variance – Joshua D. Miller, PA-C (695-698)

M) Items Added After Preparation of Agenda:

- 1) Introductions, Announcements and Recognition
- 2) Administrative Updates
- 3) Education and Examination Matters
- 4) Credentialing Matters
- 5) Practice Matters
- 6) Legislation/Administrative Rule Matters
- 7) Liaison Report(s)

- 8) Informational Item(s)
- 9) Disciplinary Matters
- 10) Presentations of Petition(s) for Summary Suspension
- 11) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
- 12) Presentation of Proposed Decisions
- 13) Presentation of Interim Order(s)
- 14) Petitions for Re-Hearing
- 15) Petitions for Assessments
- 16) Petitions to Vacate Order(s)
- 17) Petitions for Designation of Hearing Examiner
- 18) Motions
- 19) Petitions
- 20) Appearances from Requests Received or Renewed
- 21) Speaking Engagement(s), Travel, or Public Relation Request(s)

N) Public Comments

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1)(a), Stats.); to consider licensure or certification of individuals (s. 19.85(1)(b), Stats.); to consider closing disciplinary investigations with administrative warnings (ss. 19.85 (1)(b), and 448.02(8), 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.).

O) Full Board Oral Examination of Candidates for Licensure:

- 1) **9:50 A.M. – APPEARANCE – Ann M. Khanna, M.D. (303-374)**
- 2) **10:00 A.M. – APPEARANCE – Omar N. Khatib, M.D. (375-410)**
- 3) **10:10 A.M. – APPEARANCE – Zaki A. Qureshi, M.D. (411-464)**

P) Monitoring Matters – Requesting Unlimited License or Modifications

- 1) **10:20 A.M. – APPEARANCE – Roman Berezovski, M.D. (465-490)**

Q) Consulting with Legal Counsel

- 1) Discussion of *Planned Parenthood v. MEB* **(491-540)**
 - a) **10:30 A.M. – APPEARANCE – Maria Lazar, WI Department of Justice**
- 2) Discussion of Memorandum of Understanding in the matter of *State of Wisconsin v. William B. Hobbins* **(541-542)**

R) Deliberation of Motion for Rehearing in the Matter of Disciplinary Proceedings against Bashir A. Sheikh, M.D. – Case Number 10 MED 201 – Order Number 0002781 (13-46)

S) Presentation and Deliberation of Orders Fixing Costs:

- 1) Order Fixing Costs in the Matter of Disciplinary Proceedings Against Bashir A. Sheikh, M.D. – Order 0002781 – 10 MED 201 **(47-62)**
 - a) Consideration of Respondent’s Objections to Order Fixing Costs in the Matter of Disciplinary Proceedings Against Bashir A. Sheikh, M.D. – Order 0002781 – 10 MED 201 **(63-66)**
- 2) Order Fixing Costs in the Matter of Disciplinary Proceedings Against Michael Mangold, M.D. – Order 0002433 – 12 MED 103 **(543-550)**
- 3) Order Fixing Costs in the Matter of Disciplinary Proceedings Against Michael Mangold, M.D. – Order 0002829 – 12 MED 235 **(551-556)**

- T) Presentation and Deliberation of Administrative Warnings:**
- 1) 13 MED 396 (J.E.K.) **(557-558)**
- U) Deliberation of Complaints for Determination of Probable Cause:**
- 1) 11 MED 294 – Michael D. Plooster, M.D. **(559-562)**
 - 2) 12 MED 351 – Robert A. Cavanaugh, M.D. **(563-566)**
 - 3) 12 MED 439 – Anne Krutchen Bartel, M.D. **(567-570)**
- V) Presentation and Deliberation on Proposed Stipulations, Final Decisions and Orders by the Division of Legal Services and Compliance (DLSC):**
- 1) Michael D. Plooster, M.D. – 11 MED 294 **(571-578)**
 - 2) James P. Fogarty, M.D. – 12 MED 217 **(579-586)**
 - 3) Moshe Schein, M.D. – 13 MED 027 **(587-594)**
 - 4) David L. Paustian, D.O. – 12 MED 244 **(595-602)**
- W) Application Matters:**
- 1) Seeking Equivalency for the 12 Months of ACGME Approved Post-Graduate Training Based on Education and Training – Oussama Darwish, M.D. **(603-646)**
- X) Case Status Report (647-654)**
- Y) Case Closing(s)**
- 1) 13 MED 073 (R.F.T.) **(655-658)**
 - 2) 13 MED 191 (R.F.T.) **(659-662)**
 - 3) 12 MED 452 (E.M.C.) **(663-668)**
 - 4) 12 MED 384 (J.E.H.) **(669-676)**
 - 5) 13 MED 249 (A.D.B.) **(677-680)**
 - 6) 13 MED 307 (R.A.S.) **(681-688)**
 - 7) 13 MED 316 (M.J.R.) **(689-694)**
- Z) Deliberation of Items Added After Preparation of the Agenda**
- 1) Education and Examination Matters
 - 2) Credentialing Matters
 - 3) Disciplinary Matters
 - 4) Monitoring Matters
 - 5) Professional Assistance Procedure (PAP) Matters
 - 6) Petition(s) for Summary Suspensions
 - 7) Petition(s) for Extension of Time
 - 8) Proposed Interim Orders
 - 9) Petitions for Assessments and Evaluations
 - 10) Petitions to Vacate Orders
 - 11) Remedial Education Cases
 - 12) Proposed Stipulations, Final Decisions and Orders
 - 13) Administrative Warnings
 - 14) Proposed Decisions
 - 15) Matters Relating to Costs
 - 16) Complaints

- 17) Case Closings
- 18) Case Status Report
- 19) Motions
- 20) Petitions for Re-Hearing
- 21) Appearances from Requests Received or Renewed

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

- AA) Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate
- BB) Open Session Items Noticed Above not Completed in the Initial Open Session

ADJOURNMENT

**CONVENE TO LICENSING COMMITTEE MEETING
IMMEDIATELY FOLLOWING FULL BOARD MEETING**

ATTENDEES: Kenneth Simons, Timothy Swan, Timothy Westlake

**ORAL EXAMINATION OF CANDIDATES FOR LICENSURE
ROOM 121A, B, C, AND 199B
IMMEDIATELY FOLLOWING FULL BOARD MEETING**

CLOSED SESSION – Reviewing applications and conducting oral examinations of five (5) candidates for licensure – Drs. Ogland and Erickson

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**MEDICAL EXAMINING BOARD
MEETING MINUTES
DECEMBER 11, 2013**

PRESENT: Kenneth Simons, MD; Greg Collins; Timothy Westlake, MD; Timothy Swan, MD; Mary Jo Capodice, DO; Jude Genereaux; Rodney Erickson, MD; Russell Yale, MD; Gene Musser, MD; and Sridhar Vasudevan, MD

EXCUSED: James Barr; Carolyn Ogland, MD

ABSENT: Suresh Misra, MD

STAFF: Tom Ryan, Executive Director; Joshua Archiquette, Executive Staff Assistant and other Department staff

CALL TO ORDER

Kenneth Simons, Chair, called the meeting to order at 8:00 a.m. A quorum of ten (10) was confirmed.

ADOPTION OF AGENDA

MOTION: Sridhar Vasudevan moved, seconded by Gene Musser, to adopt the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES

Amendments:

➤ **Update “Dr. Adrich” to “Dr. Aldrich” regarding the Proposed Decisions and Orders**

MOTION: Sridhar Vasudevan moved, seconded by Greg Collins, to approve the minutes of November 20, 2013 as amended. Motion carried unanimously.

FSMB MATTERS

MOTION: Russell Yale moved, seconded by Sridhar Vasudevan, to designate Greg Collins as the Board’s public member scholarship recipient at the 2014 FSMB Annual Meeting Thursday-Saturday, April 24-26, 2014 in Denver Colorado, authorize his attendance and approve his travel. Motion carried unanimously.

MOTION: Timothy Westlake moved, seconded by Mary Jo Capodice, to approve Dr. Gene Musser as a candidate to serve on Board of Directors for the Federation of State Medical Boards. Motion carried unanimously.

LICENSING COMMITTEE REPORT

MOTION: Sridhar Vasudevan moved, seconded by Rodney Erickson, to authorize the Licensing Committee to make recommendations to the legislature regarding increasing the Graduate Medical Education requirement for licensure from one year to two years, and to create Visiting Physician, Resident Physician and Administrative Physician Licenses and to authorize the committee to carry on active discussions on these matters based upon today's discussion. Motion carried unanimously.

SCREENING PANEL REPORT

Jude Genereaux reported that twelve (12) cases were opened and six (6) ten-day letters were sent.

MOTION: Jude Genereaux moved, seconded by Mary Jo Capodice, to authorize the Chair to appoint Screening Panel Liaisons. Motion carried unanimously.

CLOSED SESSION

MOTION: Timothy Swan moved seconded by Timothy Westlake, to convene to closed session to deliberate on cases following hearing § 19.85 (1) (a), Stats.; consider closing disciplinary investigations with administrative warning § 19.85 (1)(b), Stats., and 448.02(8), Stats., to consider individual histories or disciplinary data § 19.85(1) (f), Stats., and, to confer with legal counsel § 19.85 (1) (g), Stats.). Kenneth Simons, Chair; read the language of the motion. The vote of each member was ascertained by voice vote. Roll Call Vote: Kenneth Simons – yes; Timothy Swan – yes; Greg Collins – yes; Timothy Westlake – yes; Mary Jo Capodice – yes; Rodney Erickson – yes; Russell Yale – yes; Sridhar Vasudevan – yes; Gene Musser – yes; and Jude Genereaux – yes. Motion carried unanimously.

The Board convened into Closed Session at 9:12 a.m.

RECONVENE TO OPEN SESSION

MOTION: Sridhar Vasudevan moved, seconded by Jude Genereaux, to reconvene into Open Session. Motion carried unanimously.

The Board reconvened into Open Session at 12:00 p.m.

MONITORING

MOTION: Greg Collins moved seconded by Sridhar Vasudevan, to deny the request of Roger Pellmann, M.D. for termination of Suspension of his license to practice medicine and surgery. Reason for Denial: Roger Pellmann, M.D. has not presented to the Board evidence sufficient to establish his ability to safely and competently resume the practice of medicine and surgery. Motion carried unanimously.

MOTION: Timothy Swan moved seconded by Greg Collins, to refuse to consider any request by Roger Pellmann, M.D., to terminate or rescind the Suspension of his license to practice medicine and surgery which request is made prior to June 30, 2014. The Board finds such timeframe reasonable based upon the Fitness For Work Evaluation performed by Cynthia Midcalf, PhD., dated November 26, 2013, Dr. Pellmann's failure to fully comply with the terms of the Board's September 19, 2012 Suspension Order, and Dr. Pellmann's repeated and current assertions that he did nothing wrong as well as his failure to assume responsibility for his actions which led to the Suspension of his license. Motion carried unanimously.

MOTION: Russell Yale moved, seconded by Jude Genereaux, to request DLSC open an investigation of Dr. Pellmann's conduct to determine if there has been any unprofessional conduct relative to submissions made by him in conjunction with his request to terminate his suspension. Motion carried unanimously.

Pam Stach, Board Legal Counsel, left the room during the presentation, deliberation and voting and did not provide legal opinion to the Board in the above matter.

FULL BOARD ORAL EXAMINATION

MOTION: Rodney Erickson moved, seconded by Russell Yale, to find that Mary F. Burgesser-Howard, M.D. passed the Full Board Oral Examination. Motion carried.

MOTION: Russell Yale moved, seconded by Timothy Westlake, to grant the application of Mary F. Burgesser-Howard, M.D. for a license to practice medicine and surgery in the State of Wisconsin once all other requirements have been met. Motion carried.

Sridhar Vasudevan abstained from voting in the above matter.

CONSULT WITH JENNIFER NASHOLD, ADMINISTRATIVE LAW JUDGE

MOTION: Sridhar Vasudevan moved, seconded by Timothy Westlake, to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order in the matter of disciplinary proceedings against Peri L. Aldrich (11 MED 123).
Motion failed.

MOTION: Timothy Swan moved, seconded by Rodney Erickson, to affirm the motion made by the Board during the November 20, 2013 Medical Examining Board meeting regarding the matter of Peri L. Aldrich, M.D (11 MED 123). Motion carried.

Sridhar Vasudevan voted no in the above matter.

Mary Jo Capodice recused herself from deliberation and voting in the above matter.

DELIBERATION OF COMPLAINT FOR DETERMINATION OF PROBABLE CAUSE

MOTION: Gene Musser moved, seconded by Timothy Swan, to find probable cause to believe that Paul A. Kornaus, M.D. – Case Number 13 MED 059 – is guilty of unprofessional conduct and therefore issue the Complaint and hold a hearing on such conduct pursuant to Wis. Stat. sec. 448.02(3) (b). Motion carried unanimously.

Rodney Erickson and Mary Jo Capodice recused themselves during deliberation and voting of the above matter.

DELIBERATION OF APPLICATION MATTERS

MOTION: Gene Musser moved, seconded by Jude Genereaux, to find that the training and education of Azar Shikholeslami, M.D. is not substantially equivalent to the requirements set forth in Wis. Stat. sec. 448.05(2). Motion carried unanimously.

MOTION: Gene Musser moved, seconded by Timothy Westlake, to find that the training and education of Jeremy L. Smiley, M.D. is substantially equivalent to the requirements set forth in Wis. Stat. sec. 448.05(2). Motion carried unanimously.

MOTION: Timothy Swan moved, seconded by Gene Musser, to grant licensure to practice medicine and surgery in the State of Wisconsin to Jeremy L. Smiley, M.D. once all requirements have been met. Motion carried unanimously.

MOTION: Russell Yale moved, seconded by Timothy Westlake, to table discussion on the matter of Oussama Darwish, M.D.'s. determination of equivalency and ask the Division of Professional Credentialing to obtain letters from his program directors assessing his competency to practice and outcomes of his cases performed during his fellowship in comparison to other graduates of their programs. Motion carried unanimously.

ADMINISTRATIVE WARNINGS

MOTION: Mary Jo Capodice moved, seconded by Timothy Swan, to issue administrative warnings in the matter of case numbers 12 MED 450 (M.J.K.), 12 MED 455 (G.A.P.), 13 MED 017 (K.K.K.), 13 MED 074 (D.W.F.), 13 MED 078 (P.A.R.). Motion carried.

Gene Musser abstained from voting in the matter of 13 MED 078 (P.A.R.)

PRESENTATION AND DELIBERATION OF PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS

MOTION: Greg Collins moved, seconded by Timothy Westlake, to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order in the matter of disciplinary proceedings against Jose G. Araujo, M.D. (12 MED 262), Don E. Breckmill, M.D. (12 MED 455), Farid A. Ahmad, M.D. (13 MED 020), Mark P. Bishop, M.D. (13 MED 264), Lislle A Leppla, M.D. (13 MED 325), Larry R. Lane, M.D. (13 MED 328). Motion carried unanimously.

MOTION: Mary Jo Capodice moved, seconded by Timothy Westlake, to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order in the matter of disciplinary proceedings against Michael A. Dehner, M.D. (12 MED 449). Motion carried.

Gene Musser abstained from voting in the above matter.

MOTION: Timothy Swan moved, seconded by Russell Yale, to adopt the Findings of Fact, Conclusions of Law, Stipulation and Order in the matter of disciplinary proceedings against Patricia L. Hough, M.D. (13 MED 267). Motion carried unanimously.

CASE CLOSURES

MOTION: Russell Yale moved, seconded by Sridhar Vasudevan, to close case # 12 MED 140 (P.A.) for P3 (Prosecutorial Discretion), case # 13 MED 215 (S.N.H.) for NV (No Violation), case # 13 MED 230 (J.M.H.) for IE (Insufficient Evidence), and case # 13 MED 312 (M.P.L.) for NV (No Violation). Motion carried unanimously.

RATIFY LICENSING

MOTION: Gene Musser moved, seconded by Greg Collins, to ratify all exams, certificates and licenses. Motion carried unanimously.

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

MOTION: Sridhar Vasudevan moved, seconded by Jude Genereaux, to affirm all votes made in closed session. Motion carried unanimously.

ADJOURNMENT

MOTION: Sridhar Vasudevan moved, seconded by Jude Genereaux, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 12:00 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: January 2, 2014 <small>Items will be considered late if submitted after 12:00 p.m. and less than: ■ 8 work days before the meeting</small> | |
| 3) Name of Board, Committee, Council, Sections: Medical Examining Board | | | |
| 4) Meeting Date: January 15, 2014 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? Motion for Rehearing In the Matter of Disciplinary Proceedings against Bashir A. Sheikh, M.D. Case No. 0002781 | |
| 7) Place Item in: <input type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input checked="" type="checkbox"/> Both | 8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input checked="" type="checkbox"/> Yes by Dr. Sheikh <small>(name)</small> <input type="checkbox"/> No | 9) Name of Case Advisor(s), if required: N/A | |
| 10) Describe the issue and action that should be addressed: <p style="margin-left: 20px;">Consider Dr. Sheikh's motion for rehearing and any objections that may be filed.</p> | | | |
| 11) Shawn Leatherwood <small>Signature of person making this request</small> | | Authorization January 2, 2014 <small>Date</small> | |
| Supervisor (if required) | | Date | |
| Bureau 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 Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. | | | |

Medical Examining Board

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935

Reference: Case No: 10 Med 201

Dear Sir/Madam:

Pursuant to section 227.49 of Wisconsin Statute as stated in the notice of rights to appeal mailed to the petitioner by Wisconsin medical examining board, petitioner, Bashir A Sheikh. MD, hereby requests for a rehearing of this case in front of the members of the medical examining board.

Every patient whom the petitioner has treated at Grant regional health center Lancaster WI has received the highest quality of competent, ethical, and compassionate medical care from him. A groundless investigation initiated against petitioner by the WLB attorney, Kim Kluck, is now condensed to three patients: Patients BK, HM, and DM. Grant regional health center Lancaster WI destroyed the normal Baby gram x ray of a clinically normal 13 month old toddler, BK, and fraudulently replaced it with a chest x ray showing acute angulated left clavicle fracture to accuse the petitioner that he missed a clavicle fracture on X Ray. Grant regional health center also destroyed the emergency room records of another patient, HM, to make unfounded and false allegations against the petitioner. DM, a 38 years old male, a potentially violent, psychiatric, and substance abuse patient has received management according to the highest standard of emergency medicine care but petitioner is being perversely targeted as to why he sedated this anxious and restless patient with an injection of Haldol prior to his physical examination.

WLB attorneys: Kim Kluck functioning as prosecutor in this investigation and Jennifer Nashold functioning as its administrative law judge are malfeasant, one-sided, and discriminative against petitioner and are trying to conceal a criminal fraud conducted by Grant regional health center. This order and opinion is abusive and is squarely against facts, fairness, and justice. It is directly against public interest and patient care in the state of Wisconsin.

Therefore, to maintain honesty and integrity of this medical examining board, to protect our ethical values of truth, fairness, and justice; and to serve its mission of protecting interests of public and quality of medical care in the state of Wisconsin, petitioner requests this board to rehear this case in front of its medical examining board members.

Petitioner


SD: //Bashir A. Sheikh, MD

State of Wisconsin

Before the Medical Examining Board

In the Matter of Disciplinary Proceeding against Sheikh Bashir Ahmed, MD

Division of Enforcement Case Number: 10-Med-201

**MOTION TO ORDER FOLLOWING FINDINGS AND CONCLUSIONS OF
FACT AS UNDISPUTED**

In his motion to dismiss, respondent submitted primary facts about patients SH, HM, DM, and BK, which form basis of Kim Kluck's complaint.

These facts have been copied from the medical records produced by Kluck.

This statement also contains facts regarding standard of practice in relevant areas of emergency medicine required by up-to-date, John Hopkins Hospital Medicine Guide, and emergency medicine textbooks.

During respondent's deposition, Kluck received the copies of all guidelines and textbook chapters referred to in this statement. Kluck verified the authenticity of these guidelines and textbook chapters. The facts stated in this statement are crucial in deciding over the standard of care and whether or not the patients complained about have been treated according to that standard.

Through this motion, respondent requests administrative law judge to issue an order pronouncing these primary facts as true, verified, and undisputed.

In case Kluck disputes the truth or authenticity of these facts, this court may compel her to support her claim with valid and admissible proof.

1) Patient SH:

A. Facts relating to T sheets as an emergency room document:

- i) To record medical information of patients in their emergency room, GRHC has adopted a T sheets system.
- ii) T sheet is a template system, which is already structured, formatted, and scripted by GRHC. In its layout, categories relating to different domains of patient's history, examination, labs, procedures, progress notes, consults, clinical impression,

discharge instructions, disposition, and condition at time of discharge are already written on this T sheets. Providers are expected to record information by tick marking or slashing different categorical choices depending upon whether that clinical category is present or absent. Clinical categories are slashed or crossed when they are not present or do not apply to the patient in question and encircled or check marked when they are present or apply to that patient.

iii) Because of their coding convenience and their brevity, a significant number of emergency rooms within United States adopt this T system of medical documentation in their emergency rooms. While categories on T sheets may vary from one emergency room to another, certain rules are common in using T sheet system for patient documentation:

- T sheets are adopted for sake of brevity so that all relevant clinical information can be readily seen and coded on a single sheet of paper.
- Providers must be brief and precise to save space on this single sheet of paper.
- T Sheets are designed by Clinicians for Clinicians. Therefore, providers must document approved medical categories with denotative and pregnant meanings instead of lanky and detailed descriptions and narratives.
- Wherever possible, providers must document as abbreviations, photographs, and sketchy diagrams instead of exhaustive descriptions and narratives.
- Emergency providers must avoid duplication and redundancy of documentation.

B. Facts relating to documentation of dermatology lesions.

- i) The clinical science of dermatology is a science of visual and spot diagnosis.
- ii) Information is documented, not in form of descriptions, but in the form of clinical lesions.
- iii) These clinical lesions stand for self-descriptive denotative and narrative information, which is understood among medical community and does not require any further description, narration, or elaboration.

C. Facts Relating to Respondent's Documentation of Patient SH

- i) Respondent has documented following history on this patient's T sheet:

SH is a 34 years old male who presented to GRHC ER at 23:30 on 8/19/2009 with a chief complaint of skin lesions which started with small spots at the base of hair follicles which became confluent ulcerated with formation of a huge patch on the back of knee and lower thigh. These lesions are still present and are located on left side in left lower extremity at left popliteal region and left calf and on right side at right anterior thigh. Lesions are burning, itchy, and painful. There is no identified cause of these lesions and patient has had no exposure to any Medication: antibiotics, aspirin, NSAID, ace inhibitors, or foods like shell fish, nuts, soybeans, eggs, or other causes like bee or wasp stings, ant bites, spiders or insect bites, poison ivy or oak, infectious illness, soap or detergents. He has not had similar symptoms previously and has not been recently seen or treated by a doctor.

REVIEW OF SYMPTOMS (ROS) for Constitutional symptoms for fever and chills are negative, ENT symptoms like sore throat, hoarseness, voice change, or lump in throat is negative. PULMONARY symptoms like cough, sputum, and shortness of breath are negative. CVS symptoms like chest pain are absent. EYE does not have any discharge or irritation. SH have no GU/GI symptoms like abdominal pain, nausea/vomiting, diarrhea, urinary problems, genital sore or discharge. SH denies any MS/LYMPH symptoms like joint pains, lumps, or swellings. SH has no past history of diabetes, high blood pressure, cardiac disease, MI, CHF, CAD, no history of hereditary angioedema or allergy to poison ivy. SH has no history of sore throat, chicken pox, shingles, HIV, or lupus. SH has had no surgery or procedures, SH is not currently taking any medications except he has had Motrin tablet this PM for his headache. SH is allergic to penicillin (gets a rash). He is a nonsmoker, non-drug abuser, and does not have any family history of atopic allergy or asthma.

ii) Respondent has documented following examination on this patient's T sheet:
SH is 6 feet and 4 inches tall, and weighs 290 lbs. His pulse rate is 87, BP is 123/68, respiratory rate is 20 and he has a temperature of 98.1 F. SH is alert and not in acute distress. *His Skin is warm and dry with normal color. He has lesions of folliculitis at right lower anterior thigh and left lower thigh and left popliteal region. The locations of lesions are illustrated on a schematic diagram in patient's T sheet.* His extremities otherwise are non-tender and are normal on inspection and range of movement. His eyes are normal on inspection. His ENT examination shows normal lips, gums, and pharynx.

His neck examination shows a midline trachea with no swelling. He has no respiratory distress and has normal breath sounds. His Cardiovascular examination shows regular and normal rate and rhythm with normal heart sounds. His abdomen is non tender with no organomegaly and his neuro examination shows that he is oriented in all three dimensions of time, person, and space with normal mood and affect and with no motor or sensory deficit.

iii) Lab Works of SH As Documented on his T Sheet:

No lab works requested on SH

iv) Procedures Done on SH as Documented on his T Sheet:

No Procedures done on SH.

v) Clinical Impression of SH As Documented By Respondent on SH's T Sheet:

SH has eczema and folliculitis with micro-abscess formation and ulceration.

vi) Discharge Instructions of SH As Documented on SH's T Sheet:

SH is discharged with instructions of Kenalog 0.1 % to apply BID and Triple antibiotic to apply twice daily.

vii) Disposition of SH As Documented By Respondent on SH's T Sheet:

SH was discharged home in stable condition with instructions to return to emergency room if his condition worsens.

D. Facts pertaining to Current Standard of care for taking Culture in a patient with folliculitis

i) The diagnosis of folliculitis is based on clinical manifestations ((Larry M. Baddour, Professor of Medicine, Chief Division of Infectious diseases Mayo Clinic; Daniel Sexton, Professor of Medicine, Chief Division of Infectious diseases Duke University; Sheldon L. Kaplan, Chief Division of Infectious diseases Baylor College of Medicine; Elinor L. Baron, Chief Division of Infectious disease, Harvard Medical School. (Up- To- Date, 2012, Folliculitis)

ii) Folliculitis is usually a clinical diagnosis; Grams Stain, cultures. KOH preparation And saline examination is recommended only when usual treatment fails especially in immuno-compromised pts. (John G. Bartlett, MD, Stanhope Jones Professor of Medicine, Chief Division of Infectious Diseases, John Hopkins Hospital,) Folliculitis, John Hopkins Medicine Guide)

iii) *Folliculitis lesions are usually diagnosed and treated on the basis of clinical Appearance alone. Culture and sensitivity are not necessary except for lesions, which are deep, and patient is not improving.* (Allan Gorroll, Professor of Medicine Harvard Medical School and Chief Physician Massachusetts General Hospital, Laurence May, Professor of Medicine University of California, Los Angeles CA, Albert G. Mulley, Chief General Internal Medicine, Massachusetts General Hospital, Harvard Medical School; Folliculitis, Primary Care Medicine, Third Edition, Page 926, 927.

E. Facts Pertaining to Standard of care for treating a patient with folliculitis:

i) *There are no randomized controlled trials for treatment of folliculitis. Folliculitis Lesions with or without drainage usually resolve spontaneously. If lesions persist, topical antibiotics may be used in the setting of presumed S.aureus infection. Systemic Antibiotics (oral Antibiotics) should not be used routinely for treatment of folliculitis.* (Larry M. Baddour, Professor of Medicine, Chief Division of Infectious diseases Mayo Clinic; Section Editor: Daniel Sexton, Professor of Medicine, Chief Division of Infectious diseases Duke University; Sheldon L. Kaplan, Chief Division of Infectious diseases Baylor College of Medicine; Deputy Editor: Elinor L. Baron, Chief Division of Infectious disease, Harvard Medical School. (Up- To- Date, 2012, Folliculitis).

ii) *Treat folliculitis with cleaning, debridement, and topical antibiotics; Systemic Antibiotics are indicated only when there are constitutional symptoms.* (Allan Gorroll, Professor of Medicine Harvard Medical School and Chief Physician Massachusetts General Hospital, Laurence May, Professor of Medicine University of California, Los Angeles CA, Albert G. Mulley, Chief General Internal Medicine, Massachusetts General Hospital, Harvard Medical School) Primary Care Medicine, Third Edition, Page 926, 927.

iii) *Topical Antibiotic therapy is the most preferred treatment for folliculitis. Consider Systemic Therapy only if topical treatment is ineffective.* (Folliculitis; Author: John G. Barlett, MD; Stanhope Jones Professor of Medicine, Chief Division of Infectious Diseases, John Hopkins Hospital).

F. Facts Pertaining to Standard of care for treating a patient with Eczema:

Topical corticosteroids are the cornerstone of therapy for eczema (also named as

Atopic dermatitis) and should be prescribed in ointment form. (Page 1533, Rosen's
Emergency Medicine, 7th edition).

G. Facts as to when and how you take a culture in a patient with folliculitis.

i) *In folliculitis, cultures are indicated only after the treatment fails.*

ii) *Taking culture from skin lesions of patient SH when he presented for first time*

Without taking any prior treatment and without any treatment failure and without any predisposing exposure or disease is against the current standard of care.

iii) *Follicular pustules are cultured not by sweeping the pustule with a cotton swab as was done by nurse Meighan, but, by cutting the entire pustule along with hair root with a # 15 blade and depositing the material along with the hair root on to the cotton swab of a transparent medium kit which is then sent to a bacteriology laboratory for Aerobic and Anaerobic cultures and antibiotic sensitivity.*

H. Facts as to why did the culture taken by nurse Meighan grow multiple organisms.

i) *When culture samples are taken incorrectly, it causes contamination.*

Contamination could occur from either the person who took the culture, from the surface and instruments where cultures was taken, or from other previous or current patients who were seen at that clinic or treated by that provider.

ii) *Because the culture was contaminated, it grew multiple organisms.*

I. Facts as to when you should prescribe oral antibiotics to a patient with folliculitis as was prescribed on SH by Nurse Meighan.

i) *When the patient of folliculitis has symptoms and signs of a systemic infection or When topical antibiotic therapy fails, then, and only then, are oral antibiotics indicated in a patient with folliculitis.*

ii) *SH had no signs or symptoms of a systemic infection nor did he have a treatment failure. Therefore oral antibiotics were not indicated in SH.*

iii) *Prescribing oral antibiotics to SH was wrong and against current standard of care.*

J. Facts as to when you prescribe clotrimazole to a patient as was prescribed on SH by Nurse Meighan.

i) *Clotrimazole is given for fungal infections.*

ii) *These fungal infections can occur among athletes in between the foot toes (webs)*

Commonly called as athletes' feet.

iii) *SH did not have any athlete's foot; SH did not have any fungal disease of skin or Any other part of his body.*

iv) *Therefore, prescribing Clotrimazole to SH was not indicated and was absolutely wrong.*

FACTUAL CONCLUSION REGARDING PATIENT SH

I. Was Patient SH treated with Gold Standard of Care

Yes

- a. SH's folliculitis of skin was diagnosed clinically. SH presented for first time for his skin lesions and his lesions have not had any treatment failure; therefore, no skin culture is indicated in SH because a culture is indicated in folliculitis only if patient's treatment fails. For his folliculitis, SH should be treated with cleaning and topical antibiotic (Triple antibiotic or Bactroban or Mupirocin). For his eczematous lesion, SH should be treated with corticosteroid skin ointment (Kenalog) because that is cornerstone for treating eczema.
- b. SH should not be treated with oral antibiotics because SH does not have any constitutional symptoms and signs of systemic infection and SH has not had any treatment failure with topical antibiotic. SH should not be treated with clotrimazole because that is used only for fungal infections and athlete's foot. SH does not have any fungal disease or athlete's foot.

II. Was The Documentation Of Patient SH Adequate?

Yes.

As can be confirmed from T sheet of SH, respondent has documented SH's complete history, clinical examination, medical decision-making, treatment, disposition, and condition at discharge on his T sheet. Respondent documented following facts on this patient's T sheet.

- a. **PATIENT'S HISTORY:** Including Onset, Location, Time Course, Review Of Systems, Past History, and Patient's Social And Family History.
- b. **PATIENT'S GENERAL PHYSICAL EXAMINATION:** Including General

Appearance, General appearance Of Skin, Examination Of Extremities, ENT Examination, Neck Examination, Respiratory Examination, CVS Examination, Abdominal Examination, and Neuro-psychiatric Examination.

c. **LOCAL SKIN EXAMINATION:** Respondent Has Documented And Illustrated Location And Type Of Skin Lesion On A Diagram On Patient's T-Sheet.

d. **DIAGNOSIS:** Respondent has documented diagnosis of SH on patient's T sheet As Folliculitis and Eczema.

e. **TREATMENT:** Respondent has documented treatment of SH on his T sheet as A local application of steroid (Kenalog skin cream) and antibiotic (Triple Antibiotic skin cream) twice daily.

f. **PHOTOGRAPHS:** T sheet documents have been further reinforced and Illustrated by a photograph of SH's lesions.

III. Was Nurse Meighan's taking Culture of Patient SH and her prescription of oral antibiotics and antifungal to SH according to current standard of Emergency

Medicine Care?

NO

2) Patient DM

A. Facts relating to GHRC

- i) GRHC does not have any security on site.\
- ii) GRHC does not have any metal detectors to screen for weapons any potentially violent patient who enters its emergency room.

B. Incidence of violence in emergency room from previously combative or agitated patients.

- i) In a survey in five mid-western hospitals, 51 % of the physicians and 67 % of nurses reported being physically assaulted at least once in past 6 months.
 - ii) The carriage of weapons in ED population is estimated at approximately 4-8 %.
 - iii) An urban hospital ED with a metal detector confiscated an average of 5.4 weapons a day. 84 % had knives and 16 % had guns.
 - iv) Patients armed with lethal weapons pose a special threat to ED staff.
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- v) Predicting weapons carriage into an ER in any particular patient is impossible; therefore, it is prudent to assume that all patients with history of combat are armed until proven otherwise.

C. Standard of care for ER management of a male patient with history of psychiatric disease, drug abuse, and previous combat in the ER who at the time of presentation to ER shows signs of agitation.

- i) Prior History of Violence, Male Gender, and Drug Abuse are Positive Predictors for Violence in an emergency room. In assessment of a patient with a previous history of combative behavior, an emergency physician must appreciate potential for violence;
- ii) Safety must be an emergency physician's first consideration; He or she must always trust his or her instincts when he or she feels unsafe. Violence in ER is fraught with extreme danger. Once violence escalates, it is difficult to control. Therefore, prevention of violence must be an emergency physician's first preference. Utilization of chemical restraints is the least threatening, least traumatic, and safest method to assist in prevention of violence.
- iii) The safest and effective chemical restraint used universally in all the Emergency rooms of US for decades is 5-10 mg of Haldol IM injection.

D. Facts relating to Patient DM

- i) DM is a 39 years old male.
- ii) DM has a documented history of Bipolar Disorder and substance abuse and has been under psychiatrist's treatment with methadone (which is prescribed for substance abuse) and lithium (which is prescribed for a maniac disorder).
- iii) On 08/10/2009, DM was brought by 6 police officers to emergency room of GRHC in an acute maniac state in total body restraint. Respondent had managed DM on this ER encounter. During this encounter, DM was combative and spat on face of respondent, nurses, and police officers and threatened that he will kill all police officers, doctors, and nurses in emergency room once he is released from his chains. Respondent then emergently transferred DM to Mendota psychiatry hospital for emergent psychiatry care.

iv) Without passing through any metal detector devices or body search for weapons,

DM rushed in to GHRC emergency room at 3:50 AM on 08/23/009.

v) When DM rushed in to the emergency room, he did not show any difficulty or limp on walking nor did he need any wheelchair or human help for any assistance.

vi) As he entered the emergency room, DM demanded the emergency room nurse for an immediate narcotic injection of Demerol and Dilaudid for his headache and muscle cramps of 4 hours duration.

vii) Emergency room nurse took his chief complaint and brief history, checked his vitals, and conducted a brief examination on DM.

viii) ER nurse who examined DM in Emergency room reported to respondent as follows:

- DM was alert and not in any acute distress, he had no breathing difficulty, no respiratory distress, and was oxygenating normally at 98 % on room air.
- DM had normal temperature, normal pulse, normal BP, normal respiratory rate, and did not have any symptoms or signs of a post-operative infection.
- DM was anxious and restless and was standing and leaping, and constantly pacing the floor of his room and moving chairs from one side to another.

E. WARNING SIGNS REGARDING DM

i) DM is taking lithium for his Maniac disorder.

ii) DM is taking methadone for his drug abuse.

iii) DM has documented combative behavior with respondent on his previous emergency room visit on 08/10/2009.

iv) DM did not pass through the metal detector, he did not go through a body search, and he refused to remove his clothes to put on a hospital gown.

v) Currently, DM is restless and anxious not lying on his hospital bed but constantly pacing the floor in his room.

vi) A satisfactory history and physical examination of DM cannot be done unless he is calm to give a coherent history and unless he lies down on a bed to allow a complete physical examination.

F. APPROACH A RATIONAL ER PHYSICIAN SHOULD TAKE TOWARDS DM

An ER provider cannot take a detailed history and conduct a complete and satisfactory physical examination on a restless patient. Unless DM's restlessness and anxiety is relieved, he is not able to give a coherent history and allow a comfortable physical examination. So that DM could lie down on a bed, and provide a coherent and uninterrupted history, and allow a satisfactory and non-confrontational physical examination, it is imperative for a rational emergency physician to sedate him and control his restlessness before he will be able to take a coherent history from DM and do a detailed and complete physical examination on him.

G. FACTS PERTAINING TO RESPONDENT'S APPROACH TO DM

- i) Respondent, therefore, asked the ER nurse to give DM, IM injection of 5 mg of haloperidol and 25 mg of phenergan to control patient's restlessness and anxiety so that respondent was able to conduct DM's history uninterruptedly and his physical examination without any confrontation from the patient.
- ii) 20 minutes after the injection of Haldol and Phenergan, DM was calm, coherent, and cooperative.
- iii) DM was able to give respondent his complete history and was able to lie down on a hospital bed to allow respondent to conduct an elaborate physical examination on him.
- iv) DM's detailed history was then taken and he was then examined to respondent's complete satisfaction.
- v) A clinical suspicion of postoperative leg vein clot or postoperative infection or any other serious medical or surgical pathology was only then completely ruled out in DM by an exhaustive history and physical examination.
- vi) After completion of history and physical examination, DM's headache and leg cramps were identified to be of benign and of risk free nature.
- vii) DM was offered Tylenol and/or Motrin to relieve his headache and leg cramps but he refused to take these medicines for his headache and leg cramps.
- viii) DM had no clinical indication for a narcotic injection of Demerol or Dilaudid.
- ix) But, DM insisted to be given an injection of narcotic medications: Demerol or Dilaudid.

- x) Respondent could not give Demerol or Dilaudid to DM because there was no medical justification to give these narcotic injections.
- xi) DM did get angry on respondent's refusal to give him narcotic injections but because of his sedative control with prior injections of haldol and phenergan, his anger remained under control and did not escalate into uncontrollable violence which could have lead to DM's self- harm, harm to other patients, and harm to medical staff in emergency room and the hospital.
- xii) Peacefully, DM left the ER without hurting himself, without hurting any body else, without destroying any hospital property, and without causing any violence in the Emergency Room.

FACTUAL CONCLUSIONS REGARDING PATIENT DM

I. Does DM have a documented diagnosis of Bipolar disorder in his medical record?

Yes

II. Does DM have a documented history of substance abuse in his medical records

Yes

III. In his previous ER encounter, does DM have a documented history of combative behavior with respondent

Yes

IV. In the current ER encounter, did the ER nurse document that DM was anxious and restless

Yes

V. Would it be medically appropriate for an ER provider to examine a previously combative male with bipolar disorder who is restless before controlling his anxiety and restlessness?

No.

It would be inappropriate and absolutely reckless to attempt to examine a bipolar male with a history of combative behavior when he is restless.

VI. Was a complete History and Examination taken on Patient DM before he left the emergency room?

Yes

VII. Would patient DM have provided an adequate and uninterrupted history and allowed an adequate and detailed examination without prior injection of Haldol

No

VIII. Was DM's leg vein blood clot and post-operative infection satisfactorily ruled out after an adequate history and examination?

Yes

IX. What were the risk in examining and treating DM without prior injections of Haldol and Phenergan?

- a. Because of his anxiety and restlessness, DM would not have provided an uninterrupted and complete medical history.*
- b. Because of his inability to lie on a bed, DM would not have allowed a satisfactory physical examination.*
- c. Therefore, possibility of a postoperative leg- vein- clot or postoperative infection could never be satisfactorily ruled out in DM without prior sedation with haldol and phenergan.*
- d. Because of Bipolar disorder, anxiety, and restlessness, DM could have been threatened by respondent's any probing question during his history taking and would have interpreted any minor clinical and physical maneuver of respondent as a physical threat, assault, and as an invasion to his personal space which could have precipitated his violent behavior.*
- e. Being Bipolar and therefore Compulsive by nature, DM's mood was unpredictable and without any prior warning, his agitation and anxiety could have escalated in to manifest violence any time during his history and physical examination.*

X. What were the advantages in examining and treating DM with prior IM injections of Haldol and Phenergan?

- a. DM allowed an uninterrupted history.*
- b. DM allowed a complete physical examination*
- c. On refusal of his demand for narcotics, DM's anger did not escalate in to open violence.*
- d. While being restless on his entering into ER and angry at the time of his departure from ER, DM did not harm himself, DM did not harm any member of ER or hospital staff.*

DM did not harm any patient in the emergency room or the hospital, and DM did not cause any violence or destroy any hospital property.

XI. Was any harm, side effect, or disadvantage caused by giving haldol and phenergan To DM prior to his history and physical examination.

None

XII. Did Respondent manage patient DM according to Gold Standard of Care

Yes

3) Patient HM

A. Medical records and its importance

- i) Provider hospitals have a legal requirement to maintain complete and accurate medical record of every individual who is evaluated or treated as an outpatient, as an emergency patient, or as an inpatient at their facility. Content of the records must be complete and must meet all the local, state, and federal, legal, regulatory, and accreditation requirements.
- ii) To be accredited by Joint Commission, healthcare facilities must meet certain standards in their documentation of medical care provided at these facilities. Joint commission accreditation is needed by these hospitals not only to demonstrate that they provide quality care but also to ensure that they are eligible for government funds. In deciding whether a facility should receive accreditation, Joint commission reviews the medical records to ensure that the facility meets the required standards. Then at regular intervals, the organization checks the facility for compliance.
- iii) Medical records provide evidence to support all aspects of a patient's care and is used by CMS, Peer Review Organizations, Quality and Performance improvement organizations, internal and external medical records auditors, utilization review organizations, Medicare and other third party payers, to evaluate the quality of care a patient has received. Accurate and complete medical records are also vital for hospital risk management and for hospital reimbursement purposes. If a medical encounter is improperly or incompletely documented, Medicare or other third party payers will deny reimbursement to the hospital for the care they provided to that patient.

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- vi) No ER services can be billed unless medical records of the billed patient are complete and signed by the responsible provider.
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C. Facts Revealed by Available Records Of Patient HM

- i) Record of HM provided by the board reveals that she is a retired 91 years old woman with a history of pacemaker placement, hypertension, and osteoporosis.
- ii) HM has had only one ER encounter registered on the date of 08/31/2009 at GHRC emergency room throughout her stay in GRHC emergency room on this date.
- iii) HM was brought to GRHC Emergency room at 11:40 AM on 08/31/2009 by an ambulance with a history that she was involved in a MVA. Emergency technician, Tim, who presented the patient at the GRHC emergency room, provided a history that HM was a restrained back seat passenger in a car wearing both a shoulder and a lap belt. The car HM was seated in moved slowly but hit a church building. Following the collision, HM was able to walk out of the car but complained of chest and neck pain at the sites of wearing the restraining belts. HM was immediately placed on a spine board and oxygen and transported to GHRC emergency room. At GRHC emergency room, Tim presented patient HM to a physician assistant by name of Les Newhouse and handed her care over to him at 11:40 AM on 08/31/2009 against a proper signature.
- iv) Les New house formally accepted this patient HM from EMT and signed to be her emergency room care provider.
- v) Beyond this acceptance signature, in the records provided, there is no note from Les Newhouse. In the records provided, there is also no note from Les Newhouse stating that Les Newhouse handed over this patient to any other provider, which could authorize and permit that provider to take over and manage this patient.
- vi) While there has to be a mandatory T sheet acceptance note from every provider who has received a patient from an EMT, in the medical records packet of HM provided by the board there is no T sheet from Les Newhouse who accepted the patient from EMT at 11:40 on 08/31/2009.
- vii) During her stay in the ER, HM has undergone multiple blood tests, multiple X rays, and multiple medical treatments in the form of an IV, Toradol injection, sublingual Nitroglycerine, and oral Tylenol.
-

iv) Most accrediting organizations have some common standards for documentation:

They require each patient's medical records be complete for every medical encounter at the earliest time and all orders including discharge, medication, lab, radiology, consult orders be justified and timed, dated, and signed by the provider making those requests. Except in a life-threatening emergency, accreditation agencies require nurses and other allied staff to conduct only those orders, which are signed in patient's medical records by the providers making those requests.

v) Responsibility of medical records lies with medical information services of the hospital (also known as health information services), which is designated, by the hospital to make certain that all medical records for every patient are timely completed and are accurate.

B. Emergency Department Protocol

i) Emergency rooms deals with patient who have emergent medical needs and conditions, which need constant attention, care, and follow up until patient's final disposition. Therefore, It is mandatory that each patient who is registered to be treated at an emergency room has an ER provider and nurse on record at all times.

ii) If there is provider for a patient on record, no other provider must intervene.

iii) When a provider has signed for a particular patient on record, this provider is responsible for that patient until the final disposition of this patient from emergency room unless he transfers his care to another provider in writing and until another provider accepts to take care of that patient in writing.

iv) In transferring a patient during a provider shift change, the outgoing ER provider has an obligation to write a note in the chart of the patient with a date and time that the care of that patient has been handed over to oncoming provider and oncoming provider has an obligation to write his own acceptance note, with time date, that he has accepted the care of that patient at this time on this date.

v) If by accident or neglect, an ER provider has neglected or forgotten to write his provider note or sign any of his orders, the medical records department of the hospital has an imperative duty to get in touch with this provider in writing as soon as possible to request him to complete his medical record and sign his orders.

viii) Unless there is a life-threatening emergency, no nurse can dispense, or give any medication, conduct a lab test, or radiological X Ray, or discharge any patient from the emergency room without a written order from the provider. In HM's case, it was not a life-threatening emergency; therefore, for every blood test, every X ray, and every medical treatment given to this patient, the emergency room nurse must first have a written order from the provider ordering those requests before conducting those requests.

ix) While the nurse has documented that charges have been made against this patient for lab work, X rays, and treatment she has received, in the records provided to Wisconsin board, signed orders from the provider who made those requests is missing from the record.

x) Nurse has documented that that patient was discharged from the ER but there is no written order from an ER provider who made that request.

xi) All the documents of HM are labeled under a single ER visit. Because all HM's care at GRHC is on 08/31/2009 and is under a single ER visit, it is reasonable to conclude that HM was technically never discharged from ER of GRHC.

xii) Addressograph label on all documents belonging to HM in the packet provided by the board state Les Newhouse and Jolene Ziebert as her providers. The Lab report results verify that all the blood tests of HM were requested and approved by Jolene Ziebert.

xiii) In the discharge instructions, nurse has somehow documented respondent as provider but that entry is not true because medical records of HM show that respondent never received this patient, never was handed over this patient, never accepted this patient; never saw this patient in emergency room, never discharged her, and never signed any of her orders.

xiv) All hospital controlling, regulatory, accreditation, and reimbursement authorities including Wisconsin department of safety and professional regulations require GRHC that all its medical records be complete on every patient and all orders be signed by appropriate individual.

xv) Had the medical records of HM been incomplete, the medical records department of GRHC would have turned the world upside down to complete her incomplete

medical records and to get her unsigned orders signed. If respondent was medical provider for patient HM and was required to write a note on her or had issued any orders on her which were unsigned, medical records department of GRHC would have written to respondent requesting him to write his missing note and/or sign his unsigned orders.

- xvi) It is impossible to believe that medical records department of GRHC would remain silent and ignore its imperative duty not to have its medical records on HM completed. GRHC could bill the ER services of this patient if there is no history and physical examination note from its ER provider and if he has not signed her orders. Therefore, it is reasonable that the actual medical records of HM were complete and the records provided to Wisconsin board are not complete.
- xvii) For last three years, Medical records department of GHRC never requested respondent to sign any orders or complete any documents regarding this patient.

B. Facts Revealed from medical record of HM

- i) After Les Newhouse signed for HM, he is required to follow her in the emergency room and to write his own T sheet note on her because he had formally accepted and signed for being her caregiver.
- ii) No other provider could intervene and take this patient HM away from Les Newhouse and claim to be her caregiver unless Les Newhouse puts a note in the patient's medical records that the medical care of this patient is transferred to that caregiver and Les Newhouse authorizes that medical caregiver to take charge of this patient.
- iii) If Les Newhouse transferred the care of HM to another provider, he must write down a handover note in the medical record of HM that he has transferred her care to another provider with a signature from that provider that, in fact, that medical provider has accepted HM from Les Newhouse and will be her medical caregiver.
- xviii) All lab works done on HM starting from 14:10 were requested, approved by, and constantly followed by Jolene Ziebert, therefore, it is reasonable to conclude that she managed HM in emergency room.

FACTUAL CONCLUSIONS REGARDING PATIENT HM.

I. According to Wisconsin Medical Board's documents of patient HM, who is the provider who accepted HM from ambulance?

Les Newhouse

II. According to Wisconsin Medical Board's medical records of patient HM, who is responsible to complete HM's T sheet

Les Newhouse

III. According to HM's medical records, did Les Newhouse write down a T sheet note on this patient HM on accepting her?

No

IV. According to HM's medical records, did Les Newhouse ever document that he transferred the care of patient HM to respondent.

No

V. According to HM's records, was respondent ever authorized as ER provider of patient HM

No

VI. According to Wisconsin Medical Board's medical records of patient HM, who ordered HM's lab works?

Jolene Ziebert

VII. Since all the medical records of patient HM are under a single ER visit, was patient HM technically discharged in between her ER visits?

No

VIII. Were cardiac enzymes of patient HM elevated at alleged discharge?

No

IX. According to Wisconsin Medical Board's document's of patient HM, can respondent be held responsible for writing a T sheet note on patient HM

No

X. According to Wisconsin Medical Board's document's of patient HM, did respondent issue any discharge orders or any other order on HM

No

XI. According to Wisconsin Medical Board's documents of patient HM, can respondent be held liable for patient HM's discharge or any other orders?

No

XII. According to Wisconsin Medical Board's documents of patient HM. can respondent be held liable for patient HM's medical care

No

4. Patient BK

A. Examination of BK done by ER nurse on 08/22/2009 at 11:24 AM

- i) BK is a 13-month-old male child who was brought by his mother on 08/22/2009 at 11:24 AM with a history that just prior to her coming to emergency room, at her home, BK fell down a full set of carpeted stairs and is since then crying. Mother denied that BK had any loss of consciousness.
- ii) On physical examination, except crying, general appearance of BK was unremarkable. His Vital Signs and clinical examination was normal with no signs of any injuries. Examination of BK's extremities showed that he was moving all his extremities normally with full and normal range of movements and had no evidence of trauma. BK had no tenderness and no evidence of upper extremity injury and his neck Examination was non-tender with full range of movements with no evidence of trauma. His skin examination showed that it was intact, warm, and dry with no evidence of discoloration, abrasion or swelling.
- iii) ER nurse noted that only a short while after, after being calmed down, BK stopped crying and was drinking bottle normally. ER nurse discharged BK home at 11:57 AM in improved and stable condition with zero pain. ER nurse gave BK's mother fall prevention instructions at the time of discharge.

B. Examination of BK done by respondent on 08/22/2009 at 11:24 AM.

- i) BK's mother presented respondent with a history that at her home, BK fell and rolled over several steps of carpeted stairs. Mother denied that BK had any pain or any evidence of injury or contusion over his scalp, neck or right and left extremity.
- ii) When respondent examined BK, he was attentive, active, playful and smiling making good contact with normal consolability.
- iii) BK had a nontender neck with painless range of motion and midline trachea.
- iv) ~~BK moved all his extremities and was nontender all over.~~

v) After examining BK, while watching him in emergency room, respondent noticed that BK was drinking milk from the bottle normally and fell asleep in his mother's lap while drinking milk.

vi) With a diagnosis of fall and rolling over the steps; with no evidence of injury, respondent discharged BK home in improved and stable condition without any medications and with child rearing instructions for his mother.

C. Examination of BK done by ER Nurse on 08/22/2009 at 15:46

i) BK's mother again presented BK in the ER to the ER nurse at 15:46 on 08/22/2009 complaining that she is unable to pick the child up.

ii) When ER nurse examined BK, she found that BK had normal vital signs and was sleeping.

iii) ER nurse found that BK was not in any distress, was not crying and was consolable.

iv) ER nurse examined the extremities of BK again and found that BK's Extremities were non-tender and with normal tone and he was able to move all his extremities without any limitation of range of movements.

v) ER noticed once more that BK's skin was intact, warm, and dry with no discoloration.

vi) ER nurse noted that BK's rest of clinical examination was negative.

vii) While watching BK in his room, ER nurse notice that BK was sleeping on mother's chest without any crying.

viii) With verbal instructions, ER nurse discharged BK home in stable and unchanged condition from ER at 16:55

D. Examination of BK done by respondent on 08/22/2009 at 15:46

i) Once more BK came to ER and was seen by Respondent at 15:46.

ii) Mother complained that she has been sent to ER by Dr. Huebschman demanding that ER doctor should take this child's X ray to make sure that baby did not have any bony injury.

iii) Respondent examined BK again and found that he was not in any acute distress and was normally attentive. Because of being awakened from sleep, baby was crying.

- iv) Respondent once more examined BK's neck which was non-tender with painless and normal range of motion with no muscle spasm or pain on movement of neck. The extremities examination of BK showed that he was able to move all his extremities with normal range of motion and were non-tender. BK's skin examination showed that his skin was intact, of normal color, dry, and without any echymosis, abrasions, or laceration.
- v) Rest of clinical examination on BK was negative.
- vi) Respondent requested for Baby gram X ray of BK. Respondent personally reviewed this baby gram X ray and documented in BK's T sheet that that this baby gram x ray was normal.
- vii) Respondent discharged BK home in improved and stable condition on a prescription of Tylenol 100 mg PO prn Q 6 hrs for painful crying.

E. Examination of BK done by Christine Duranceau on 08/23/2009 at 9: 45 AM

- i) Mother presented to an ER at Platteville WI with a history that Dr. Huebschman has sent her to this ER for getting her boy checked. According to mother, whenever she picks up the child and holds him by his chest he cries, which according to mother was normal, as documented by Platteville, ER provider.
- ii) The child has been holding and taking his bottle normally with no problems.
- iii) According to mother, child is moving the neck OK.
- iv) On examination, child was very playful, smiling, and laughing and rotating his neck easily.
- v) Neck has full range of movements with no crying and in fact laughing when playing. All the four extremities have full range of motion. Child is able to grab with his left arm and lift his shoulder.

F. Clinical features of an acute clavicle fracture:

- i) When bones break, there is bleeding from two ends of the broken bone and from the tissues surrounding them. This bleeding will manifest clinically as bluish discoloration of skin and swelling. Bruising and a bulge will therefore be directly visible over the broken bone. Being the most superficial bone in body with no muscles or fat around it, bleeding underneath the skin around broken fractured ends of a clavicle will be directly visible and palpable.

- ii) When the clavicle bone is broken and the broken bone pieces are not straight but are bent against each at an angle, an irregularity and a deformity of the bone at that site will be directly visible and palpable.
- iii) When the two bone pieces of the broken clavicle are broken and are at an angle against each other, it will tent the skin over them, which will be directly visible and palpable.
- iv) In a fractured clavicle, to relieve tension over the fracture bone ends caused by weight of the shoulder, shoulder will slump on fractured side and the shoulder will sag down and forward. Inspection of the shoulder on that side will reveal that the shoulder on the involved side is slumped inferomedially because of the weight of the shoulder pulling on the fractured clavicle.
- v) In a fractured clavicle, the child will hold the involved arm against the body and supports it with the opposite hand because this position is most comfortable and it limits the pull from the weight of the arm and shoulder on the fractured bone.
- vi) In a fractured clavicle, on the involved side, the neck muscle, Sterno-cleido-mastoid muscle, a muscle taking its origin from this broken clavicle will go in to a spasm and the tension of this spasm will tilt the head toward the affected side and rotates the chin toward the opposite side, a condition we call as "spasmodic torticollis".
- vii) There is intense and intolerable pain from the broken ends of the clavicle bone, which is constant and distressing and will be severely increased by any activity of muscle taking its origin from or getting inserted on the broken clavicle. This pain will induce reflex spasm, board like rigidity, and splinting of the neck, shoulder, and arm, on that side, which in a child, will manifest clinically as "drooped shoulder", "pseudo-paralysis" of that arm and "Spasmodic Torticollis" of the neck on the involved side.
- viii) When the clavicle bone is fractured and the bone ends are touching each other, any active or passive movement of the arm on the involved side will cause a grinding or crackling sensation when trying to raise the arm, which will be directly palpable and audible.

ix) In rare cases, the broken end of the bone might even penetrate the skin and be exposed.

Factual Conclusion Regarding patient BK:

I. Could BK have a left clavicle fracture

NO

- a. The side on which clavicle is broken will be completely asymmetrical as compared to the side on which clavicle is normal. The skin over the broken clavicle will be discolored, bruised, and ecchymosed. When the ends of the broken bone stand against each other at an angle, the skin over the broken bone ends will be tented. In contrast, BK's left clavicle area, left shoulder, and left arm is completely symmetrical and identical as compared to his right clavicle area, right shoulder, and right arm. BK has no bruise, contusion, or discoloration of skin over left clavicle area and the skin over his left clavicle has the same color as skin over his right clavicle. BK has no visible or palpable bony irregularity or swelling in left clavicle area with no tenting of skin. BK's left clavicle area is as smooth and as plain as his right clavicle area.
- b. BK has no pain on the movements of his neck. In contrast, BK's neck movements are completely free and painless which will never be the case in left clavicle fracture.
- c. BK is not holding his left arm immobile and close to his chest resting on his right hand as is the usual attitude of a patient with left clavicle fracture. In contrast, BK's left arm is hanging freely from his left shoulder without any pain or discomfort. BK has no pain in raising left arm up to 90 degrees, which will be excruciatingly and unbearably painful in left clavicle fracture.
- d. BK has no palpable crepitus on raising his left arm.
- e. BK is smiling and playful which will never be the case in a child with a fractured bone because of constant distress and pain.

II. Could X ray presented by GRHC belong to patient BK¹

¹ This X ray presented by GRHC is focused on left clavicle. Radiology technician has raised child's right arm and specifically exposed and positioned child's left clavicle at the center of his X ray film. This

NO

a. X ray presented by GRHC shows that on the left side, the clavicle is completely broken at the junction of its medial and middle third and the two broken ends are angulated at each other. Clavicle in a 13-month-old child is a blood forming and a very vascular organ. When this bone is broken, bone will bleed; unavoidably and extensively, from its cavity and from its fractured ends and from blood vessels of surrounding tissues. This blood will accumulate around broken bone ends and underneath the skin of fractured site of left clavicle. There is no muscle or fat lying in between skin and clavicle as this bone is the most superficial bone of body. Skin of a 13-month-old Caucasian child, particularly over clavicle, is extremely thin, semi-transparent, and almost see-through. Therefore, left clavicle broken bone ends and blood surrounding those broken ends will be directly visible and palpable. Extensive bleeding underneath skin at fractured site will clinically manifest as a skin discoloration and swelling due to accumulation of blood underneath the skin. In BK, there is no bluish discoloration of skin at the site of alleged fracture on left side even 36 hours after his injury, nor is there any swelling in the clavicle region on the left side nor is there any other evidence that left side is in any way different from the right side. Therefore, the X ray presented by GRHC could not belong to BK.

b. In X ray presented by GRHC, on left side, clavicle bone is fractured and broken in to two pieces and the broken ends are angulated at each other at 120 degrees while on right side, the clavicle is unbroken, single piece, straight, and smooth. This difference in clavicle bones on two sides should clinically manifest in patient as an asymmetry between the two sides with irregularity of left clavicle as compared to right clavicle and elevation and tenting of the skin on left clavicle as compared to skin over right clavicle. In BK, there is no irregularity of left clavicle as compared to right side, the right clavicle and the left clavicle

positioning suggests that radiology technician knew that the child does not have any pathology on right side or otherwise he would not have raised the child's right arm and kept it away from the x ray film. Moreover, radiologist technician also knew that the child has left clavicle fracture or otherwise he would not have placed left clavicle of this child at the center of his X Ray film. On clinical examination of BK, there was never a suspicion that any abnormality existed in left clavicle area. X ray requested for BK was a Baby gram, which included his skull and both feet with positioning of both of his arms and legs symmetrically in same position so that they could be compared with each other for any asymmetrical findings to rule out a subtle fracture and/or a child abuse. In X ray presented by GRHC, top of Child's Skull is not visible, nor, is the face of the child fully exposed, nor, are the arms and legs placed symmetrically. In this X ray child's right arm is raised while the X ray is focused specifically on left clavicle depicting an obvious, acute, and angulated clavicle fracture of an already clinically diagnosed left clavicle fracture patient.

look and feel identical on both sides and are completely symmetrical with no elevation or tenting of skin in left clavicle area; therefore the X ray can not belong to BK.

- c. In the X ray presented by GRHC, the clavicle is broken in two pieces on left side. This is an extremely and distressingly painful condition. To reduce this pain, patient's body will reflexly try to immobilize these broken bone ends. To immobilize these broken bone ends, muscles arising from and inserted on them will go in to an involuntary spasm. That involuntary muscle spasm will droop the shoulder on the effected side and patient will not be able to use his arm on that side, a condition we call clinically as "pseudo-paralysis". When left clavicle is broken, patient will hold this left shoulder and left arm completely still and motionless and will hold it close to and against his chest wall supported by his right fore arm and right hand. The patient will not allow and will resist any movement of left arm. In BK there is no droop of left shoulder; BK's left arm is hanging freely without any discomfort; BK is able to hold his milk bottle strongly with his left arm and left hand; BK is freely able to use his left arm up to 90 degrees and in fact he "smiled and laughed" when one provider tried to move his left arm up to ninety degrees. If BK's left clavicle were broken, he would resist, scream, and not allow any movement of his left arm. If BK's left clavicle were broken as shown on the GRHC X ray, he will be unable to hold his milk bottle with that side. He will resist raising that arm even 5 degrees but BK is comfortably and smilingly able to raise his left arm up to 90 degrees; therefore, this GRHC X ray can not belong to BK.
- d. In the X ray presented by GRHC, on left side, the broken bone ends of left clavicle are touching against each other and with any movement of left arm these bone ends will scratch against each other like two ends of a broken pipe, which will produce a grating sound which will be clinically audible and palpable as a crepitus. A crepitus could neither be heard nor felt in BK by 3 different people at 5 different times; therefore, this X Ray cannot belong to BK.

III. Is Documentation Regarding Patient BK Complete

Yes

IV. Did respondent manage BK according to Gold Standard of Care

Yes

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST : DHA CASE NO. SPS-12-0010
: DLSC CASE NO. 10 MED 201
BASHIR A. SHEIKH, M.D., :
RESPONDENT. :

COMPLAINANT’S RESPONSE TO RESPONDENT’S REQUEST FOR REHEARING

Kim M. Kluck, attorney for Complainant, Wisconsin Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), 1400 East Washington Avenue, Madison, Wisconsin, pursuant to Wis. Stat. § 227.49(4) files this Response to Respondent’s Petition for Rehearing by Bashir A. Sheikh, M.D.

ARGUMENT

In his request for Rehearing, Respondent appears to argue that there have been material errors of law and of fact by the administrative law judge (ALJ) in the Proposed Decision and Order. He contends that the ALJ’s order and opinion are “squarely against facts, fairness, and justice.” (Letter Requesting Re-Hearing by Respondent, undated, hereinafter “Petition”). Respondent then makes conclusory statements about what he believes the evidence showed. More particularly, Respondent contends that Grant Regional Health Center “destroyed the normal Baby gram x ray (sic) of a clinically normal 13 month old toddler, BK, and fraudulently replaced it with a chest x ray (sic) showing acute angulated left clavicle fracture;” that Grant Regional Health Center “destroyed the emergency room records of another patient, HM;” and that Patient D.M. was “a potentially violent, psychiatric, and substance abuse patient” who had received from Respondent “management according to the highest standard of emergency

medicine care¹.” (*Petition*). Respondent’s *Petition* as to all three patients is without merit as will be explained below.

Standard of Review

Wisconsin Statute Section 227.49(3), provides as follows: "Rehearing will be granted only on the basis of: (a) Some material error of law. (b) Some material error of fact. (c) The discovery of new evidence sufficiency strong to reverse or modify the order, and which could not have been previously discovered by due diligence."

A material fact is one that affects the resolution of the controversy. *Clay v. Horton Mfg. Co.*, 172 Wis. 2d 349, 354, 493 N.W.2d 379, 381 (Ct. App. 1992). In this case, Respondent has not presented any new evidence and has not demonstrated any material errors of fact.

Furthermore, Respondent has not demonstrated that the ALJ applied the facts incorrectly to the law. The ALJ properly used the unprofessional conduct standard set forth in *Gilbert v. Medical Examining Board*, 119 Wis. 2d 168, 196, 349 N.W.2d 69 (1984). (See page 31 of Proposed Decision and Order).

Respondent has not alleged the discovery of new evidence which could not previously have been discovered with due diligence. In fact, he has not alleged new evidence at all.

Respondent has not met the statutory standard for rehearing, so his petition must be denied.

Patient D.M.

The ALJ found that Patient D.M. was not violent during his presentation to the ER on August 23, 2009. That finding is supported by credible and substantial evidence in the record through the testimony of Nurse Becky Johnstone and Nurse Marie Streif and Patient D.M.’s

¹ Respondent does not contend error in his *Petition* regarding the ALJ’s findings of fact and conclusions of law that Respondent engaged in unprofessional conduct in diagnosing Patient D.M. with “mania” without any supporting exam findings. As such, those findings and conclusions will not be addressed and this response will be limited to the administration of Haldol issue.

medical records. (*Exhibit 14, pp. 2-3; Hrg. Trans. Vol. I, p. 57, lines 7 – p. 58, line 2; p. 59, line 12 – p. 60, line 15; p. 61, line 12 – p. 62, line 1; p. 65, lines 7-12; p. 66, lines 9-12; p. 68, lines 6-9, 12-25; p. 71, line 14 – p. 75, line 17; p. 82, lines 1-7; p. 79, lines 2-9*). Respondent has failed to demonstrate that there was a material error in this finding of fact by the ALJ.

The ALJ found that Respondent ordered Haldol for Patient D.M. before evaluating him and, in fact, *refused* to see the patient before Haldol was administered. (*Hrg. Trans., Vol. III, p. 759, line 24 – p. 760, line 24; p. 684, line 16 – p. 686, line 17*). There was no evidence prior to the administration of Haldol on August 23, 2009 that Patient D.M. posed a threat of harm to anyone in the ER. (*Id., p. 677, lines 4-10; p. 755, line 12 – p. 758, line 1; p. 759, lines 11-23*). The expert testimony established that before ordering a powerful antipsychotic medication such as Haldol, it is generally necessary to evaluate the patient in person first. Respondent's failure to do so fell below the minimum standard of competency. (*Hrg. Trans. Vol. I, p. 208, line 16 – p. 210, line 19; p. 220, lines 21-25; p. 226, line 7 – p. 227, line 23*). The ALJ's findings of fact are supported by substantial evidence and Respondent has failed to demonstrate any material errors of fact. Furthermore, the ALJ's conclusion of law that Respondent engaged in professional misconduct by ordering Haldol before he examined Patient D.M. is supported by substantial evidence. Respondent has failed to demonstrate that the ALJ's conclusion of law was a material error of law.

Patient H.M.

Respondent's contention that Grant Regional Health Center (GRHC) "destroyed the emergency room records of another patient, HM, to make unfounded and false allegations against the petitioner" is not supported by any credible evidence. While it is correct that there is only one emergency room physician record for Patient H.M. on August 31, 2009 when she had two visits to the emergency room, that is because *Respondent* did not create one regarding his

involvement in her care on the initial visit. Despite the absence of records by Respondent for that first visit, there is ample evidence of more than one “encounter” registered for that date. Specifically, the records reflect that Patient H.M. was evaluated by a triage nurse during both emergency room (ER) visits (*Exhibit 15, pp. 2-5*) and that diagnostic tests were ordered by Leslie Newhouse and Respondent during the initial visit. (*Exhibit 4*).

The ALJ’s findings of fact regarding Respondent’s involvement in Patient H.M.’s care are supported by substantial evidence in the record. Witnesses testified that he did participate in her care and the medical record contains circumstantial evidence that he did participate in her medical care and treatment. The ALJ chose to believe the testimony of Mr. Newhouse and Kimberly Moore regarding Respondent going into exam room 6 where Patient H.M. had been placed and by verbally cancelling x-rays. (*Hrg. Trans., Vol. I, p. 90, line 13 – p. 91, lines 6, 10-18; p. 96, line 17- p. 97, line 10; Exhibit 8, p. 33, line 25 – p. 38, line 11*). In addition, the GRHC computer records reflect that Respondent ordered lab tests for Patient H.M. for CK, troponin and myoglobin. It was a common practice for a nurse to enter an order into the computer on behalf of the ordering physician. (*Hrg. Trans., Vol. I, p. 102, lines 13-21; p. 103, line 23 – p. 104, line 19; Exhibit 4; Exhibit 15, pp. 4-5*).

Respondent does not raise any issue in his Petition regarding the ALJ’s credibility determination as to either fact witnesses or the experts’ opinions as to unprofessional conduct. As such, the ALJ’s credibility determinations need not be addressed as to these witnesses.

Respondent has not produced any credible evidence that GRHC destroyed any records. The ALJ’s findings of fact regarding Respondent’s involvement in the patient’s care are supported by substantial evidence and Respondent has failed to demonstrate any material errors of fact. Furthermore, the ALJ’s conclusions of law that Respondent engaged in professional misconduct by failing to document his involvement in Patient H.M.’s care, by discharging

Patient H.M. with elevated cardiac enzymes, and by discharging Patient H.M. to home without adequately clearing her cervical spine are supported by substantial evidence. Respondent has failed to demonstrate that the ALJ's conclusions of law constituted material errors of law.

Patient B.K.

Respondent contends that he did not see Patient B.K.'s chest x-ray from August 22, 2009. Rather, someone at GRHC switched the x-rays on him and he reviewed an x-ray that did not belong to Patient B.K. on August 22, 2009. However, that contention is not borne out by the facts. The ALJ found that on August 22, 2009, Jenae Wittman (radiology technologist) spoke with Respondent about his order for a babygram for Patient B.K. After speaking to Respondent in the ER, Ms. Wittman entered an order for a chest x-ray for Patient B.K. into the Healthland system. She proceeded to transport Patient B.K. to the x-ray department to take the x-ray. Ms. Wittman only had access to the one image that she took of Patient B.K. on August 22, 2009. After she accepted that image, it was automatically sent to Respondent. Ms. Wittman referred to the Interworks system as the way that Respondent would be able to view the image.² It was not possible for Ms. Wittman to have sent a different x-ray to the system for Respondent to view. (*Exhibit 2; Exhibit 3; Hrg. Trans. Vol. I, p. 25, line 12 – p. 27, line 22; p. 31, lines 5 – 13; p. 33, line 4 – p. 34, line 4.*)

Respondent's contention that the x-rays were switched by staff at GRHC is completely baseless and should be disregarded as the free play of his creative imagination, i.e., fantasy. The simple fact is that he reviewed the correct chest x-ray for Patient B.K. on August 22, 2009. The evidence from every other physician involved in Patient B.K.'s case demonstrated that Respondent misread the x-ray and sent the child home with a clavicle fracture. The ALJ's findings of fact regarding that x-ray interpretation are contained in paragraph 61 of the Proposed

² Witness Kimberly Moore referred to it as the PACS master folder.

Decision and Order are supported by substantial evidence. She cites to testimony from Dr. Parker, Dr. Dunn, Dr. Cornell Overbeeke and Respondent (at hearing) that the x-ray did, in fact, depict a fracture of Patient B.K.'s clavicle. (*Hrg. Trans. Vol. I, p. 282, lines 18-20; p. 29, lines 14-19; Vol. III, p. 664, lines 1-3; p. 665, line 22 – p. 666, line 23; p. 689, lines 21-22; 742, lines 25 – p. 743, line 3; p. 792, lines 14-16; p. 870, lines 2-3; Exhibit 25, p. 31, lines 11 – 20; p. 34, line 15 – p. 36, line 13; Exhibit 9, p. 5*).

The ALJ's findings of fact that Respondent reviewed the correct x-ray for Patient B.K. on August 22, 2009 and that there was no switching of x-rays are supported by credible evidence. Furthermore, the ALJ's finding of fact that Respondent simply mis-read the x-ray is supported by credible evidence. Respondent has failed to demonstrate any material errors of fact. Furthermore, the ALJ's conclusions of law that Respondent engaged in professional misconduct by failing to note the presence of the obvious clavicle fracture is supported by substantial evidence. Respondent has failed to demonstrate that the ALJ's conclusion of law constituted a material error of law.

CONCLUSION

Based on Respondent's failure to establish any material errors of fact or law. Complainant requests that the Board deny Respondent's Petition for Rehearing.

Respectfully submitted this 23rd day of December, 2013.



Kim M. Kluck
State Bar Number 1047485
Prosecuting Attorney
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708
Tel. (608) 266-9925

**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: January 2, 2014 <small>Items will be considered late if submitted after 12:00 p.m. and less than: ■ 8 work days before the meeting</small> | | | | | | | | | | | | | | | | |
| 3) Name of Board, Committee, Council, Sections: Medical Examining Board | | | | | | | | | | | | | | | | | | |
| 4) Meeting Date: January 15, 2014 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? Order Fixing Costs In the Matter of Disciplinary Proceedings against Bashir A. Sheikh, M.D. Case No. 0002781 | | | | | | | | | | | | | | | | |
| 7) Place Item in: <input type="checkbox"/> Open Session <input checked="" type="checkbox"/> Closed Session <input type="checkbox"/> Both | 8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input checked="" type="checkbox"/> Yes by Dr. Sheikh <small>(name)</small> <input type="checkbox"/> No | 9) Name of Case Advisor(s), if required: N/A | | | | | | | | | | | | | | | | |
| 10) Describe the issue and action that should be addressed: Consider any objections to costs that may be filed and determine the amount of costs to be assessed. | | | | | | | | | | | | | | | | | | |
| <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">11)</td> <td style="width: 20%; text-align: center;">Authorization</td> <td style="width: 20%;"></td> </tr> <tr> <td>Shawn Leatherwood</td> <td></td> <td style="text-align: right;">January 2, 2014</td> </tr> <tr> <td>Signature of person making this request</td> <td></td> <td style="text-align: right;">Date</td> </tr> <tr> <td>Supervisor (if required)</td> <td></td> <td style="text-align: right;">Date</td> </tr> <tr> <td colspan="2">Bureau Director signature (indicates approval to add post agenda deadline item to agenda)</td> <td style="text-align: right;">Date</td> </tr> </table> | | | | 11) | Authorization | | Shawn Leatherwood | | January 2, 2014 | Signature of person making this request | | Date | Supervisor (if required) | | Date | Bureau Director signature (indicates approval to add post agenda deadline item to agenda) | | Date |
| 11) | Authorization | | | | | | | | | | | | | | | | | |
| Shawn Leatherwood | | January 2, 2014 | | | | | | | | | | | | | | | | |
| Signature of person making this request | | Date | | | | | | | | | | | | | | | | |
| Supervisor (if required) | | Date | | | | | | | | | | | | | | | | |
| Bureau 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 Board Services Bureau 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
BEFORE THE MEDICAL EXAMINING BOARD

| | | |
|-------------------------------|---|--------------------|
| IN THE MATTER OF DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | ORDER FIXING COSTS |
| | : | |
| BASHIR A. SHEIKH M.D. | : | ORDER0002781 |
| RESPONDENT | : | |

TO: Bashir A. Sheikh

On November 20, 2013, the Medical Examining Board issued its Final Decision and Order in the above-captioned matter by which the Board ordered that pursuant to §440.22, Wis. Stats., the costs of this proceeding be assessed against Respondent. The Medical Examining Board received the Affidavits of costs from the Division of Legal Services and Compliance and the Division of Hearings and Appeals. The Medical Examining Board considered the Affidavits of Costs on January 15, 2014, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to § 440.22, Wis. Stats., seventy five percent of the costs of this proceeding in the amount of \$31, 872.13, set forth in the Affidavits of Costs of Attorney Kim Kluck and Administrative Law Judge Jennifer Nashold, are hereby assessed against Respondent, and shall be payable by Respondent to the Department of Safety and Professional Services. **Failure of Respondent to make payment on or before June 22, 2014, shall constitute a violation of the Order unless Respondent petitions for and the Board grants a different deadline.** Under § 440.22(3), Wis. Stats., the Department of Safety and Professional Services may not restore, renew or otherwise issue any credential to the Respondent until Respondent has made payment to the Department in the full amount assessed.

Payment shall be made payable to the Wisconsin Department of Safety and Professional Services and mailed to:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

Dated this ____ day of January, 2014.

By: _____
Member of the Board



Before The
State Of Wisconsin
MEDICAL EXAMINING BOARD

In the Matter of the Disciplinary Proceedings
 Against **BASHIR A. SHEIKH, M.D.**, Respondent

AFFIDAVIT OF COSTS
 Order No. _____

Division of Legal Services and Compliance Case No. 10 MED 201

Jennifer Nashold, Administrative Law Judge, affirms the following before a notary public for use in this action, subject to the penalties for perjury in Wis. Stat. § 946.31:

1. I am an administrative law judge/attorney licensed to practice law in the State of Wisconsin, employed by the Wisconsin Division of Hearings and Appeals. I served as the Administrative Law Judge in the above-captioned matter.

2. This affidavit sets forth the costs and expenses incurred in this matter based upon my contemporaneous timekeeping entries in connection with the hearing.

| Date | Action | Time |
|----------|-----------------------------|---------------------|
| 01/24/12 | File Review (FR) | 6 minutes |
| 02/13/12 | Draft (DRFT) | 6 minutes |
| 02/23/12 | Prehearing Conference (PHC) | 6 minutes |
| 03/13/12 | PHC/DRFT | 18 minutes |
| 05/30/12 | PHC/FR/DRFT | 42 minutes |
| 07/16/12 | FR/DRFT | 12 minutes |
| 08/09/12 | PHC | 1 hour |
| 10/22/12 | Hearing (HRG)/FR | 2 hours, 15 minutes |
| 10/29/12 | FR/DRFT | 1 hour, 45 minutes |
| 10/30/12 | DRFT/Research (R) | 3 hours, 30 minutes |
| 10/31/12 | DRFT | 30 minutes |
| 11/01/12 | R/Correspondence (CORR) | 1 hour, 30 minutes |
| 11/02/12 | DRFT/FR/CORR | 2 hours, 15 minutes |
| 11/09/12 | FR | 3 hours |
| 11/12/12 | HRG/PHC/CORR | 5 hours, 45 minutes |
| 11/13/12 | HRG/FR | 7 hours |
| 11/14/12 | DRFT | 3 hours, 30 minutes |

| | | |
|----------|---|---------------------|
| 11/15/12 | DRFT | 2 hours, 45 minutes |
| 11/30/12 | DRFT | 12 minutes |
| 12/11/12 | CORR | 18 minutes |
| 12/13/12 | PHC/DRFT | 30 minutes |
| 12/19/12 | PHC/DRFT | 18 minutes |
| | | |
| 01/07/13 | PHC/DRFT | 12 minutes |
| 01/17/13 | PHC/FR | 24 minutes |
| 01/18/13 | DRFT | 6 minutes |
| 03/11/13 | E-mail (E) | 12 minutes |
| 03/21/13 | E | 6 minutes |
| 04/02/13 | FR | 5 hours, 30 minutes |
| 04/03/13 | FR/HRG | 9 hours, 18 minutes |
| 04/04/13 | FR/HRG | 9 hours |
| 04/22/13 | DRFT | 12 minutes |
| 08/06/13 | FR | 24 minutes |
| 08/08/13 | FR | 3 hours |
| 08/09/13 | FR | 2 hours, 30 minutes |
| 08/14/13 | DRFT/FR | 2 hours, 18 minutes |
| 08/19/13 | FR/DRFT | 3 hours |
| 08/20/13 | DRFT/FR | 4 hours, 30 minutes |
| 08/22/13 | DRFT/FR | 2 hours, 42 minutes |
| 08/27/13 | DRFT/FR | 5 hours |
| 08/28/13 | DRFT/FR | 3 hours, 30 minutes |
| 08/29/13 | DRFT/FR | 10 hours |
| 08/30/13 | DRFT/FR | 9 hours |
| 09/03/13 | DRFT/FR | 8 hours |
| 09/04/13 | DRFT/FR | 7 hours, 30 minutes |
| 09/05/13 | DRFT/FR | 6 hours, 30 minutes |
| 09/06/13 | DRFT/FR | 9 hours |
| 09/08/13 | DRFT/FR | 11 hours |
| 09/09/13 | DRFT/FR | 6 hours, 30 minutes |
| 09/10/13 | DRFT/FR | 7 hours |
| 09/11/13 | DRFT/FR | 5 hours, 30 minutes |
| 09/12/13 | DRFT/FR | 3 hours, 18 minutes |
| 09/24/13 | E/DRFT (Extension request for objections) | 36 minutes |
| | | |
| | | |
| | | |

3. That upon information and belief the total assessable costs for the Division of Hearings and Appeals are as follows:

A. Administrative Law Judge: 173.55 hours at \$61.00 per hour = \$10,586.55.

Dated this 5 day of December, 2013.

By: 
Jennifer E. Nashold
Administrative Law Judge

Subscribed and sworn to before me this
5th day of December, 2013


NOTARY PUBLIC, STATE OF WISCONSIN
MY COMMISSION EXPIRES ON July 12, 2015

G:\DOCS\SP\Affidavits\Sheikh\Basim\AffidavitOfCosts.jen

STATE OF WISCONSIN
BEFORE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

AFFIDAVIT OF COSTS

Bashir Ahmed Sheikh

10 MED 201

RESPONDENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Being duly on affirmation, the undersigned employee of the Department of Safety and Professional Services, upon information and belief, deposes and states as follows:

That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter

EXPERT WITNESS EXPENSE --- Courtney Keo

| DATE | | COST |
|--|---|----------|
| 7/31/2012 | Expert costs - Megeen Parker (7/1-7/22/12) | \$825.00 |
| 3/4/2013 | Expert costs - Megeen Parker (11/6-11/13/12) | \$900.00 |
| 4/17/2013 | Expert costs - Megeen Parker (3/25-4/2/13) | \$750.00 |
| 12/19/2011 | Expert costs - Megeen Parker (11/14-11/22/11) | \$375.00 |
| TOTAL EXPERT WITNESS EXPENSE --- \$2,850.00 | | |

INVESTIGATOR EXPENSE --- Hannah Whaley

| DATE | | HOURS | MINUTES |
|------------|--|-------|---------|
| 4/2/2012 | emails to/from atty. KMK, drafting letter to expert re: passwods. | 0 | 15 |
| 3/19/2012 | conf. w. atty KMK | 0 | 20 |
| 3/13/2012 | printing for Atty. KMK | 0 | 30 |
| 12/20/2011 | conf. w. atty. KMK, and Expert: Dr. Parker | 2 | 0 |
| 11/11/2011 | rec. cd regarding S.M. rash, copied pictures to casefile, printed out copies | 0 | 20 |
| 11/9/2011 | call from atty. KE, he will mail me a copy of the CD (digital image). | 0 | 5 |
| 11/4/2011 | call from R, R req 1st letter from DSPS re: complaint, reviewing file, | 0 | 20 |
| 11/3/2011 | attempting to make cd copy of xrays, disc. w. atty KMK, copies of medical | 2 | 0 |
| 10/28/2011 | reviewing for phone conf, call from 2 RNs re DM, disc. w. atty. KMK, memo | 1 | 15 |
| 10/25/2011 | emails atty KMK, file organized, OLA, gave file to atty KMK | 0 | 30 |
| 10/25/2011 | R called, disc. license, told him his license renewal has gone through. | 0 | 5 |
| 10/18/2011 | rec. VM from K.E., review information, sent email req. for information re pt. | 0 | 20 |
| 10/17/2011 | phone call from C's atty. KE re: phone conf. w. 2RN's, set up for 10-21-11 | 0 | 30 |
| 10/14/2011 | phone call from R re license renewal. | 0 | 10 |
| 10/5/2011 | VM from atty KE, call/disc. w. atty KE, review info, ICE potential wit. | 0 | 30 |
| 9/26/2011 | copies made, letter to CA Mager w. additional info. | 0 | 30 |
| 9/21/2011 | reviewing med recs for S.H., updating cs, email to atty KK. | 0 | 35 |
| 9/21/2011 | consult w. atty KK, reviewing med recs and research, email to atty Kevin | 1 | 0 |
| 9/15/2011 | reviewing medical recs, updating cs | 0 | 30 |
| 9/15/2011 | phone calls to 2 rec req locations, got update on status; 1 sent on 9-8-11 (if | 0 | 20 |
| 9/2/2011 | phone call from GRHC atty KE: re update, email to atty. KK | 0 | 15 |
| 9/1/2011 | reviewing additional questions, emails to atty Kevin Eldridge (GRHC), VM | 0 | 25 |
| 9/1/2011 | med rec req, calls to atty KE, Consult w. KK | 1 | 10 |
| 8/30/2011 | consult w. atty. KK, reviewing case, email(s) to GRHC atty. Kevin Eldridge, | 1 | 0 |
| 8/18/2011 | R called to request a hearing to be heard in front of the board with grant | 0 | 10 |
| 6/22/2011 | dis. of casefile/rec. with Dr. Mager, memo, dis. w. attny. KK | 1 | 15 |
| 6/22/2011 | dis. w. CA mager, dis. w. attny. KK, gave casefile to KK. | 0 | 40 |
| 6/20/2011 | dis. w. CA Mager, memo, dis. w. attny. KK, dis. w. CA Mager, Mager will call | 0 | 30 |
| 6/10/2011 | email to CA regarding transfer (MAGER), copies made, file org, c/s updated, | 1 | 0 |
| 6/6/2011 | Travel to Lancaster to interview PA Newhouse, APNP Ziebert and Nurse | 6 | 25 |
| 6/3/2011 | updating information to court reporter | 0 | 5 |
| 6/2/2011 | email to attny KE, disc. w. attny. KK and Para BC, copies made, preparing for | 1 | 0 |
| 5/31/2011 | dis. w. attny. KK, email to attny. KE, copies made | 0 | 30 |
| 5/19/2011 | voicemail from attny. KE, dis. w. KK, email to attny. KE | 0 | 20 |
| 5/3/2011 | emails back and forth re: scheduling for interview, with attny. KE (GRHC) | 0 | 10 |

| | | | |
|------------|--|---|----|
| 4/15/2011 | emails from hosp. attny. KE, forward to attny. KK | 0 | 5 |
| 4/7/2011 | dis. w. kk regarding update to R attny Pines, call to attny Pines. | 0 | 10 |
| 4/4/2011 | call from Lester Pines for update, I will dis. w. attny. KK and call him back on | 0 | 5 |
| 3/2/2011 | VM from C's attny, email from C's attny, email to attny KK, letter for xray | 0 | 40 |
| 3/1/2011 | dis. w. c's attny. Eldridge | 0 | 15 |
| 3/1/2011 | dis. w. attny. KK, dis. w. C's attny. Eldridge, memo, update CS | 0 | 45 |
| 2/28/2011 | dis. w. attny. KK | 0 | 10 |
| 2/3/2011 | review R's response, update CS, email attny. KMK | 0 | 40 |
| 12/20/2010 | dis. w. r's attny, memo, letter to r's attny: req. for response copy. | 0 | 20 |
| 12/17/2010 | phone call to R's attny, organize file | 0 | 15 |
| 12/13/2010 | phone call from R's Attorney, memo | 0 | 10 |
| 12/13/2010 | phone call from R, memo | 0 | 15 |
| 11/29/2010 | letter to R | 0 | 20 |
| 11/15/2010 | dis. w. attny, copies made, med recs sent to R. | 0 | 30 |
| 11/5/2010 | discussion with R, discussion with attny | 0 | 30 |
| 11/1/2010 | call from R, memo, discussion w. atty, email to CA | 0 | 45 |
| 10/27/2010 | CS finished, letter to R, copies made, dis. with attny. | 4 | 30 |
| 10/27/2010 | discuss w/KES | 0 | 10 |
| 10/25/2010 | reviewing med rec. organizing file, copies made, CS started | 5 | 0 |
| 10/22/2010 | discuss w/KES | 0 | 10 |
| 10/22/2010 | reviewing files | 4 | 30 |
| 10/30/2013 | VM from R, wanted my letters?, call to R, asked for the 4 letters he sent? I | 0 | 5 |
| 6/20/2013 | reviewing R employment Locum Tenens history in WI | 0 | 45 |
| 4/3/2013 | copies for hearing | 0 | 5 |
| 8/7/2012 | attempting to find/contact witnesses, Call to HM: spoke with, Call to MH: no | 1 | 15 |
| 8/6/2012 | disc. w. atty. KMK re: contacting pts. | 0 | 20 |
| 6/11/2012 | copying x-ray files, disc. w. atty KMK | 1 | 0 |
| 5/15/2012 | copying images onto CD, letter to Rs atty w. passwords, disc. w. atty KMK | 0 | 15 |
| 5/15/2012 | disc. w. atty KMK, printing out docs, reviewing update doc | 0 | 20 |
| 4/24/2012 | attempting to Everify R's other state licensure | 0 | 30 |
| 4/5/2012 | reviewing interagatories in depth | 0 | 15 |
| 4/3/2012 | reivewing interrogatories | 0 | 15 |
| 4/2/2012 | finishing letter to expert, email to expert, copies in file | 0 | 15 |

TOTAL INVESTIGATOR EXPENSE --- 52 HOURS AND 35 MINUTES **HOURS MINUTES**
(Based on their average salary and benefits at the Division of Enforcement) **TOTALS 52 35**

A \$29.00 PER HOUR \$1,524.92

INVESTIGATOR EXPENSE --- Kelley Sankbeil

| DATE | | HOURS | MINUTES |
|------------|---|-------|---------|
| 10/27/2010 | Discuss w/Hoff | 0 | 10 |
| 10/22/2010 | discuss w/Hoff. File to Hoff for summ | 0 | 10 |
| 10/21/2010 | email from and to Attny Eldridge | 0 | 15 |
| 9/27/2010 | TCT Attny Eldridge & memo | 0 | 20 |
| 9/27/2010 | edit and resend letter to Attorney Eldridge | 0 | 20 |
| 9/27/2010 | vm from Attny Kevin Eldridge | 0 | 10 |
| 9/21/2010 | file review | 0 | 15 |
| 9/21/2010 | letter to Attny Eldridge req additional information | 0 | 30 |

TOTAL INVESTIGATOR EXPENSE --- 2 HOURS AND 10 MINUTES **HOURS MINUTES**
(Based on their average salary and benefits at the Division of Enforcement) **TOTALS 2 10**

A \$29.00 PER HOUR \$62.83

MISCELLANEOUS EXPENSE --- Dawn Kalies

| DATE | | HOURS | MINUTES |
|----------|--------------------------|-------|---------|
| 4/3/2013 | photocopying for hearing | 0 | 15 |

TOTAL MISCELLANEOUS EXPENSE --- 0 HOURS AND 15 MINUTES **HOURS MINUTES**
(Based on their average salary and benefits at the Division of Enforcement) **TOTALS 0 15**

A PER HOUR \$0.00

MISCELLANEOUS EXPENSE --- Jane Brischke

| DATE | | COST |
|-----------|--|------------|
| 11/8/2012 | court reporter - For the Record Inc. (videotape deposition of Kimberly Moore | \$224.65 |
| 4/22/2013 | For the Record Court Reporting - transcript of proceedings on 4/3/2013 and | \$2,397.65 |
| 1/2/2013 | court reporter - For The Record Inc. (transcript of proceedings 11/12/12 & | \$1,375.70 |
| 11/8/2012 | Videographer - Video Concepts (invoice #110418) | \$304.00 |
| 11/8/2012 | court reporter - For the Record Inc. (transcript of proceedings on 10/22/2012) | \$311.85 |

| | | |
|---|---|----------|
| 7/20/2012 | For the Record Court Reporting - deposition of Megeen parker MD on | \$565.00 |
| 6/8/2012 | For The Record Inc (court reporting) - deposition of Bashir Sheikh, MD on | \$701.40 |
| 10/11/2011 | copy charge - Grant Community Clinic SMDV (Hines, Steven) | \$4.83 |
| 9/21/2011 | copy charge - Southwest Health Center (Kipper) | \$23.44 |
| 6/29/2011 | For the Record Court Reporting | \$261.60 |
| TOTAL MISCELLANEOUS EXPENSE --- \$6,170.12 | | |

MISCELLANEOUS EXPENSE --- Mitali Chatterjee

| DATE | | HOURS | MINUTES |
|--|--|---------------|----------------|
| 7/1/2013 | Confirm reply brief deadline for KK; f/u with SN re: review of brief for KK: draft | 0 | 40 |
| 4/4/2013 | Work on searching for Dr. John Quinn's contact info; call and leave msgs; | 0 | 20 |
| 7/8/2013 | Search re: brief filed and confirmation for KK | 0 | 10 |
| TOTAL MISCELLANEOUS EXPENSE --- 1 HOURS AND 10 MINUTES | | HOURS | MINUTES |
| (Based on their average salary and benefits at the Division of Enforcement) | | TOTALS | 1 10 |
| A | PER HOUR \$0.00 | | |

PARALEGAL EXPENSE --- Beth Cramton

| DATE | | HOURS | MINUTES |
|---|--|-------|---------|
| 11/22/2013 | serve order on r | 0 | 10 |
| 6/26/2013 | conf w/ atty; review and proof brief | 0 | 45 |
| 6/20/2013 | review r's closing argument; research manlove case; search for proposed | 1 | 35 |
| 5/16/2013 | revise closing argument and PDO w atty; draft ltr to alj; email alj and atty for r | | \$6.64 |
| 5/15/2013 | proof proposed decision; conf w/ atty | 2 | 15 |
| 5/13/2013 | proof closing argument; conf w/ atty | 2 | 50 |
| 5/9/2013 | research assessment orders; proof argument | 2 | 30 |
| 4/12/2013 | review expert testimony | 1 | 15 |
| 4/11/2013 | email fr jm re appl file; conf w/ atty | 0 | 10 |
| 4/4/2013 | attend and assist attorney at hearing | 0 | 45 |
| 4/3/2013 | prep room for hearing | 0 | 30 |
| 3/29/2013 | arrange court report for hearing | 0 | 10 |
| 3/26/2013 | conf w/ atty; copy Dunn depo mail to alj and r's atty | 0 | 20 |
| 2/25/2013 | revise subpoena | 0 | 35 |
| 2/22/2013 | draft notice of depo; subpoena; ltr to r's atty | 0 | 45 |
| 1/31/2013 | draft supoena and cover letter to witness; mail | 0 | 30 |
| 1/29/2013 | calendar | 0 | 10 |
| 1/8/2013 | file amended complaint; prepare mailing; aff of service | 0 | 45 |
| 1/7/2013 | revise amended complaint | 0 | 20 |
| 12/19/2012 | scan exhibits and email to r's atty | 1 | 45 |
| 12/10/2012 | review transcript of expert witness testimony | 1 | 35 |
| 11/28/2012 | amend expert memo | 0 | 35 |
| 11/13/2012 | attend hearing; assist attorney and witnesses | 5 | 10 |
| 11/12/2012 | attend hearing; assist attorney and witnesses | 3 | 55 |
| 11/9/2012 | conf w/ atty | 0 | 10 |
| 11/6/2012 | hrq prep - alleg checklist | 0 | 35 |
| 10/23/2012 | ltr to alj and r re exhibit 8; mail to both | 0 | 25 |
| 10/22/2012 | assist atty at motion hearing; take notes of hearing | 1 | 30 |
| 10/17/2012 | prepare exhibit folders for hearing | 3 | 20 |
| 10/3/2012 | ltr to alj re preliminary witness list; mail | 0 | 35 |
| 9/5/2012 | draft hearing subpoenas | 0 | 45 |
| 9/4/2012 | tc to Eldridge re service of hearing subpoenas | 0 | 10 |
| 7/19/2012 | mail label for atty for r; ltr to expert re depo docs; mail | 0 | 25 |
| 7/2/2012 | copy transcripts; ltr to atty for r; mail disc rps to atty for r | 0 | 20 |
| 6/29/2012 | hand deliver response to motion to compel to dha and atty for r | 0 | 45 |
| 6/28/2012 | law library - research for brief | 1 | 30 |
| 6/11/2012 | confer w/atty; copy discovery; draft letter to r's atty; prepare mailing to atty for | 1 | 15 |
| 5/18/2012 | confer w/ atty; prepare copies for deposition | 1 | 25 |
| 5/15/2012 | draft 3rd notice of provision; ltr to alj; file w/ alj and mail to r's atty; ltr to r's atty | 2 | 5 |
| 5/8/2012 | draft deposition subpoena | 0 | 25 |
| 4/10/2012 | draft 2nd notice of provision of records; ltr to alj; file; mail to r's atty; ltr to r's | 1 | 25 |
| 4/9/2012 | make copies for discovery | 1 | 30 |
| 3/20/2012 | ltr to r's atty re inter and rfpd; mail | 0 | 20 |
| 3/19/2012 | amended notice; ltr to alj; draft first set of interrogatories and rfpd | 0 | 35 |
| 3/14/2012 | ltr to alj; ltr to atty for r; file notice; mail to atty for r | 1 | 10 |
| 3/13/2012 | copy/ paginate med records; scan; draft discovery docs | 1 | 50 |
| 1/23/2012 | draft noh; file complaint; prepare mailing; aom | 1 | 15 |
| 1/9/2012 | agenda request form for Complaint for probable cause; to board | 0 | 30 |
| 11/15/2010 | respondent record request | 0 | 20 |
| TOTAL PARALEGAL EXPENSE --- \$6.64 | | | |

PARALEGAL EXPENSE --- Courtney Keo

| DATE | | HOURS | MINUTES |
|------------|--|-------|---------|
| 5/8/2013 | copy of contract amendment to kluck for case file, original to contract folder | 0 | 10 |
| 4/17/2013 | Processed/approved expert invoice, inter d mailed to fiscal for payment | 0 | 25 |
| 4/17/2013 | drafted contract amendment cover letter, prepped mailing, mailed to expert, | 0 | 25 |
| 4/15/2013 | reviewed memo, drafted amendment #2 to expert contract, delivered to front | 0 | 25 |
| 4/12/2013 | reviewed expert contract materials, invoice to kluck | 0 | 15 |
| 3/20/2013 | copy of contract amendment to kluck for case file | 0 | 10 |
| 3/11/2013 | cc with Kluck, phone call with expert | 0 | 30 |
| 3/4/2013 | cc w/ Kluck, drafted contract amendment, delivered to Sec Off for signature, | 1 | 25 |
| 11/21/2012 | Reviewed expert invoice/contract; note to atty kluck | 0 | 10 |
| 7/31/2012 | Processed expert invoice for payment, delivered original and copy to Fiscal, | 0 | 25 |
| 7/26/2012 | Preliminary approval of expert invoice | 0 | 10 |
| 12/19/2011 | Processed expert invoice for payment | 0 | 20 |
| 11/21/2011 | Copy of expert contract to Atty Kluck; W-9 form to Fiscal. | 0 | 15 |
| 11/8/2011 | Drafted contract cover letter and mailed contract to expert | 0 | 20 |
| 11/7/2011 | Drafted expert contract and routed to Deputy Secretary for approval/signature | 0 | 20 |

TOTAL PARALEGAL EXPENSE --- 5 HOURS AND 45 MINUTES **HOURS** **MINUTES**
 (Based on their average salary and benefits at the Division of Enforcement) **TOTALS** **5** **45**

A \$29.00 PER HOUR \$166.75

PARALEGAL EXPENSE --- Lori Hoechst

| DATE | | HOURS | MINUTES |
|-----------|------------------------------|-------|---------|
| 6/29/2012 | proof response brief for KK. | 0 | 25 |

TOTAL PARALEGAL EXPENSE --- 0 HOURS AND 25 MINUTES **HOURS** **MINUTES**
 (Based on their average salary and benefits at the Division of Enforcement) **TOTALS** **0** **25**

A \$29.00 PER HOUR \$12.08

PARALEGAL EXPENSE --- Mitali Chatterjee

| DATE | | HOURS | MINUTES |
|-----------|---|-------|---------|
| 5/10/2012 | Review NOH & Subpoena for Depo with BC & discuss statutes & template. | 0 | 10 |

TOTAL PARALEGAL EXPENSE --- 0 HOURS AND 10 MINUTES **HOURS** **MINUTES**
 (Based on their average salary and benefits at the Division of Enforcement) **TOTALS** **0** **10**

A \$29.00 PER HOUR \$4.83

PROSECUTING ATTORNEY EXPENSE --- James Polewski

| DATE | | HOURS | MINUTES |
|------------|---|-------|---------|
| 4/2/2012 | C KMK, discovery strategy | 0 | 10 |
| 10/17/2012 | confer with Kim Kluck on evidentiary issues | 0 | 25 |

TOTAL PROSECUTING ATTORNEY 0 HOURS AND 35 MINUTES **HOURS** **MINUTES**
 (Based on their average salary and benefits at the Division of Enforcement) **TOTALS** **0** **35**

A \$61.00 PER HOUR \$35.58

PROSECUTING ATTORNEY EXPENSE --- John Zwiag

| DATE | | HOURS | MINUTES |
|-----------|--------------------------|-------|---------|
| 8/13/2010 | Review file. Email to DK | 0 | 15 |

TOTAL PROSECUTING ATTORNEY 0 HOURS AND 15 MINUTES **HOURS** **MINUTES**
 (Based on their average salary and benefits at the Division of Enforcement) **TOTALS** **0** **15**

A \$61.00 PER HOUR \$15.25

PROSECUTING ATTORNEY EXPENSE --- Kim Kluck

| DATE | | HOURS | MINUTES |
|-----------|---|-------|---------|
| 3/14/2012 | E-mail from/to expert; conf with paralegal. | 0 | 15 |
| 3/13/2012 | Organize exhibits for RTA's. | 0 | 20 |
| 3/13/2012 | Conf call with alj and atty; work on RTA's; conf with paralegal re: discovery | 3 | 40 |
| 3/12/2012 | REview discovery requests; e-mail to expert. | 0 | 25 |
| 3/8/2012 | Review correspondence. | 0 | 5 |
| 3/6/2012 | Review e-mail and revised order on conf call. | 0 | 5 |
| 3/5/2012 | TCW atty; note to file. | 0 | 10 |
| 2/23/2012 | TCW Atty Ebbe; conf call with alj; review phone messages; review e-mail and | 0 | 30 |
| 2/21/2012 | TCW r's new atty. | 0 | 5 |

| | | | |
|------------|---|---|----|
| 2/16/2012 | TCW Pat Knight who may be representing R. | 0 | 5 |
| 2/13/2012 | Review message from R's atty. | 0 | 5 |
| 2/13/2012 | TCW atty mahaney; note to file. | 0 | 15 |
| 2/6/2012 | TCW R and note to file. | 0 | 10 |
| 2/3/2012 | Listen to message from R; note to file. | 0 | 10 |
| 2/2/2012 | REview phone message from R.; e-mail to R with copy of complaint; note to | 0 | 10 |
| 1/26/2012 | Review and respond to e-mail from expert re: amendments to pleading. | 0 | 10 |
| 1/9/2012 | REvise and finalize complaint; e-mail to JL and expert for review; conf with | 4 | 5 |
| 1/4/2012 | Conf with paralegal re: complaint. | 0 | 5 |
| 12/28/2011 | REview correspondence and computer printouts and e-mailed to expert for | 0 | 10 |
| 12/20/2011 | Letter to eldridge for supplemental information. | 0 | 10 |
| 12/20/2011 | conf with paralegal. | 0 | 5 |
| 12/20/2011 | Prepare for meeting and meeting with expert; tcw CA. | 2 | 15 |
| 12/8/2011 | REview materials from hospital; letter to expert with materials and request for | 0 | 30 |
| 12/2/2011 | E-mail to/from Atty Eldridge; TCW atty; letter to atty. | 0 | 30 |
| 12/1/2011 | REview file materials; TCW J. Rutkowski re: x-rays for B.E. and computer | 0 | 15 |
| 11/30/2011 | TCW expert; conf with inv HH. | 0 | 25 |
| 11/30/2011 | TC and message for expert. | 0 | 5 |
| 11/10/2011 | review letter from R. | 0 | 5 |
| 11/9/2011 | review phone message from R.; review letter to expert and materials to be | 0 | 20 |
| 11/3/2011 | REview file materials to send to expert; tcw expert Dr. parker; prepare expert | 1 | 55 |
| 10/27/2011 | 2 TC and left message for Dr. Parker; note to file. | 0 | 15 |
| 10/26/2011 | Draft and send response letter to R. | 0 | 20 |
| 10/24/2011 | REview e-mail from case advisor. | 0 | 5 |
| 10/21/2011 | REview e-mail from inv HH with e-mial statement by nurse; review and | 0 | 20 |
| 10/6/2011 | E-mail to Dr. Hamedani re possible ER experts. | 0 | 10 |
| 10/5/2011 | TCW Dr. Sheikh; TCW CA: TC and left message for expert; note to file. | 0 | 30 |
| 9/22/2011 | REview supplemental medical records. | 0 | 25 |
| 9/21/2011 | TCW R. ;note to file. | 0 | 10 |
| 9/19/2011 | TCW CA; TCW Dr. Sheikh, note to file; e-mail to CA. | 0 | 40 |
| 9/1/2011 | Conf with inv re: records. | 0 | 10 |
| 8/31/2011 | Cont draft of petition; review petition by AT. | 1 | 25 |
| 8/30/2011 | Legal research; review prior board orders for competency examinations; draft | 4 | 10 |
| 8/18/2011 | TCW R. and note to file. | 0 | 15 |
| 8/15/2011 | TC from Dr. Sheikh re: case; note to file. | 0 | 20 |
| 8/12/2011 | TCW Dr. Sheik; TCW Lester Pines; note to file. | 0 | 15 |
| 8/9/2011 | REview file materials. | 0 | 20 |
| 6/22/2011 | conf with investigator; note to file; review statutes and look for petition to | 0 | 35 |
| 6/14/2011 | conf with inv and CA re: status of case. | 0 | 15 |
| 6/9/2011 | TC and left message for Atty Pines that investigation in ongoing. | 0 | 5 |
| 6/6/2011 | Travel to Lancaster to interview PA Newhouse, APNP Ziebert and Nurse | 6 | 25 |
| 6/2/2011 | Prepare for interviews of Newhouse and Ziebart; review records; conf with | 4 | 10 |
| 5/31/2011 | conf with paralegal re: interviews; e-mail to paralegal; brief record review. | 0 | 20 |
| 4/7/2011 | Conf with inv re: status adn request by R's atty for status. | 0 | 5 |
| 3/1/2011 | Complete initial review of med recs; summ med rec and R response; conf | 1 | 20 |
| 2/28/2011 | REview medical records and R's reply letter. | 2 | 50 |
| 12/30/2010 | Conf with investigator; tc to R's atty re: his client calling me and the e-mail. | 0 | 10 |
| 12/30/2010 | TC with Atty Loeb; multiple e-mails to Loeb; TC from Dr. Sheikh; note to file. | 0 | 15 |
| 11/15/2010 | conf with Inv.; review letter re: medical records. | 0 | 20 |
| 11/12/2010 | Draft letter to R. for response with medical records. | 0 | 45 |
| 11/5/2010 | TCW r. re: investigation; note to file; conf. with investigator re: letter to R. with | 0 | 35 |
| 11/4/2010 | E-mail to records custodian; review memo re: conversation with R. and | 0 | 10 |
| 10/28/2010 | Review letter draft by investigator; conf with Inv. Hoff; conf with JEP re: | 1 | 25 |
| 9/7/2010 | Review NPDB report; review s. 146.38; conf with PS re: peer review requests; | 0 | 55 |
| 10/5/2012 | TCW Atty Eldridge; email to Eldridge; email paralegal; review notes; conf with | 1 | 5 |
| 10/4/2012 | Prepare auth memo. | 0 | 15 |
| 10/3/2012 | TCW Atty eldridge re: witness deposition; email to R.; note to file; | 1 | 5 |
| 10/1/2012 | TC and LM for R. re: deposition. | 0 | 5 |
| 9/25/2012 | conf with JL re: review of brief; review of rule re: service of response brief by | 0 | 10 |
| 9/25/2012 | Legal research; prepare notice of learned treatises. | 0 | 35 |
| 9/20/2012 | Complete draft of response to motion to dismiss. | 2 | 15 |
| 9/20/2012 | Proofread brief; give to JL to review. | 0 | 30 |
| 9/19/2012 | Legal research; review motion to dismiss; begin drafting response brief. | 3 | 50 |
| 9/6/2012 | TCW Atty Eldridge re: acceptance of subpoena service. | 0 | 5 |
| 9/6/2012 | conf with paralegal; review subpoenas. | 0 | 10 |
| 9/4/2012 | conf with paralegal re: witness subpoenas. | 0 | 10 |
| 8/31/2012 | REview witness list for subpoenas; email paralegal. | 0 | 20 |
| 8/9/2012 | Scheduling conference call with alj and r's atty and r. | 0 | 45 |
| 8/8/2012 | REview/respond to email from inv re: witnesses. | 0 | 5 |
| 8/6/2012 | Work on prelim witness list; TCW Dr. Overbeeke; email to Dr. Overbeeke; | 2 | 0 |

| | | | |
|-----------|---|---|----|
| 8/1/2012 | REview motion to withdraw and SCR. | 0 | 10 |
| 7/31/2012 | TC and LM for witness; letter to r's atty re: email to/from expert on learned | 0 | 15 |
| 7/31/2012 | TCW Jenae Wittman; note to file; draft prelim witness list. | 0 | 50 |
| 7/30/2012 | conf with JL re: request for email to expert about Dr. Moran and she advised | 0 | 5 |
| 7/19/2012 | Letter to witness Wittmann; letter to r's atty re: journal articles; review journal | 1 | 5 |
| 7/19/2012 | emails to/from court reporter and expert re: deposition errata sheet. | 0 | 10 |
| 7/18/2012 | email to expert. | 0 | 5 |
| 7/12/2012 | meet with expert; attend deposition of expert. | 6 | 30 |
| 7/10/2012 | Prep for conf call with expert; review discovery and emails; tcw expert; conf | 0 | 55 |
| 7/9/2012 | Email from/to expert. | 0 | 5 |
| 7/6/2012 | review and respond to emails from expert and r's atty. | 0 | 10 |
| 7/3/2012 | conf with JL re: reasons for legal standard for opposing motion to compel | 0 | 10 |
| 7/2/2012 | Legal research; two e-mails to JL; draft discovery responses and investigativ | 1 | 35 |
| 6/29/2012 | email to JL; revise brief; conf with JL re: brief and interviews of witnesses; | 0 | 30 |
| 6/28/2012 | Legal research; complete draft of response brief; draft affidavit; e-mail to | 4 | 45 |
| 6/27/2012 | Legal research; draft response. | 4 | 10 |
| 6/26/2012 | email to expert. | 0 | 5 |
| 6/26/2012 | Legal research; draft response to motion to compel. | 4 | 25 |
| 6/11/2012 | REVise 2 sets of discovery; review medical records of DM provided and CD of | 3 | 25 |
| 5/30/2012 | Telephone scheduling conference. | 0 | 20 |
| 5/30/2012 | E-mail to/from alj re: resetting hearing date; conf with paralegal re: | 0 | 10 |
| 5/29/2012 | TCW atty eldridge re: records requests and witness names; e-mail to/from r's | 0 | 35 |
| 5/21/2012 | Prep for depo; travel to/from r's atty office and depose r. | 5 | 35 |
| 5/18/2012 | Prep for depo of R; review records and exhibits. | 4 | 50 |
| 5/15/2012 | conf with paralegal re: discovery; revise and finalize amended responses and | 2 | 55 |
| 5/14/2012 | TC and LM for expert; TCW expert; revise discovery responses; review | 1 | 40 |
| 5/14/2012 | E-mail to r's atty re: dates of avail for expert. | 0 | 5 |
| 5/11/2012 | TC and LM for expert. | 0 | 5 |
| 5/11/2012 | TCw and e-mail to R's atty re: deposition dates and our initial offer. | 0 | 10 |
| 5/10/2012 | Work on discovery responses. | 1 | 5 |
| 5/8/2012 | conf with paralegal re: new discovery; TSC with atty and alj's assistant. | 0 | 10 |
| 5/4/2012 | TCW r's atty re: discovery request; tcw atty eldridge re: additional records | 0 | 55 |
| 4/24/2012 | REview discovery responses and letter from r's atty; legal research re: | 1 | 25 |
| 4/16/2012 | Legal research; conf with paralegal; detailed review of discovery responses; | 2 | 35 |
| 4/12/2012 | E-mail from/to Dr. Moran; review CV of Moran and e-mail to expert for review | 0 | 25 |
| 4/10/2012 | Finalize responses; review e-mail from gen counsel on peer review; | 0 | 45 |
| 4/9/2012 | REVise discovery response; conf with gen counsel re: work product; conf with | 2 | 55 |
| 4/6/2012 | REVise discovery answers; e-mail from/to expert; conf with JP; conf with JL; e- | 0 | 45 |
| 4/4/2012 | email to expert; redact NPDB info from interrogatories; review discovery | 0 | 20 |
| 4/3/2012 | travel to ebling library to research med articles/journals; revise discovery | 4 | 20 |
| 4/2/2012 | conf w inv HW; conf with JP re: treatise; legal research re: treatise | 3 | 20 |
| 3/30/2012 | REVise discovery responses; e-mails from/to expert; TCW atty eldridge; | 3 | 10 |
| 3/29/2012 | Travel to expert's clinic to meet re: discovery requests. | 2 | 20 |
| 3/22/2012 | REview journal articles; e-mail to expert re: meeting. | 1 | 35 |
| 3/20/2012 | Cont draft of discovery resopnses; review discovery requeuts to R. | 1 | 15 |
| 3/19/2012 | Cont work on discovery responses; legal research re: work product; e-mail | 4 | 30 |
| 3/16/2012 | Work on draft of discovery resopnses; legal research re: discovery resopnses | 2 | 25 |
| 4/2/2013 | TCW expert. | 0 | 15 |
| 4/1/2013 | TRavel to med library for textbook; prep for cross of expert; email from/to atty | 1 | 55 |
| 4/1/2013 | email from/to r's aty. | 0 | 5 |
| 3/27/2013 | REview deposition of Dunn; tcw ebling library re: book; review initial hearing | 2 | 45 |
| 3/26/2013 | conf with paralegal; letter to alj with additional exhibit. | 0 | 30 |
| 3/25/2013 | review exhibits list from r's atty; tcw expert; scan and email documents from | 1 | 5 |
| 3/18/2013 | review depo transcript of dunn from 03med318. | 0 | 45 |
| 3/13/2013 | Review and hi-lite Dr. Dunn deposition; email to expert; revise cross of R. | 1 | 5 |
| 3/11/2013 | med research re: haldol time to take effect. | 0 | 10 |
| 3/11/2013 | TCW expert; conf with CK re: expert fees; email to alj and r's atty; email to | 0 | 30 |
| 3/8/2013 | email to r's atty re: MI article by Dr. Dunn. | 0 | 5 |
| 3/8/2013 | attempt to download article; email to inv; review ACEP policy statements. | 0 | 15 |
| 3/7/2013 | emails to/from CK re: fees; letter and email to Dr. parker; copy and mail letter. | 0 | 25 |
| 3/6/2013 | prep for and take deposition of Dr. Dunn; review articles received from r's atty | 4 | 15 |
| 3/5/2013 | Prep for deposition of Dr. Dunn; research re: witness; review sheikh | 3 | 10 |
| 3/4/2013 | TC and LM for expert; prep for depo of Dr. Dunn; emails to r's atty. | 2 | 5 |
| 2/25/2013 | REview deposition notice and revise. | 0 | 10 |
| 2/21/2013 | email from/to r's atty re: deposition. | 0 | 5 |
| 2/1/2013 | calendar deadlines; review email from Dr. Duranceau. | 0 | 10 |
| 1/31/2013 | review notes and file materials; TC and LM for Dr. Overbeeke; TC and LM for | 1 | 5 |
| 1/30/2013 | Letter to r's atty requesting depo dates for experts. | 0 | 10 |
| 1/30/2013 | review answer to amended complaint. | 0 | 5 |
| 1/29/2013 | TC and LM for Dr. Parker. | 0 | 5 |

| | | | |
|------------|--|---|----|
| 1/17/2013 | conf call with alj and r's atty; tcw atty eldridge re: witnesses; email to expert. | 0 | 35 |
| 1/11/2013 | Drafting PDO; review transcript; prepare for cross of R. | 2 | 25 |
| 1/9/2013 | Cont draft of pdo; review transcript and exhibits. | 1 | 50 |
| 1/8/2013 | conf draft of pdo. | 1 | 50 |
| 1/7/2013 | Draft amended complaint; Telephone conference with ALJ; review expert | 5 | 35 |
| 12/19/2012 | TSC. | 0 | 20 |
| 12/18/2012 | Begin draft of PRO. | 0 | 45 |
| 12/14/2012 | email from/to r's atty. | 0 | 5 |
| 12/13/2012 | TCW Atty Erickson; TSC with alj and Erickson. | 0 | 15 |
| 12/11/2012 | Review and respond to email from alj; conf with JL re: memo for expert fees. | 0 | 10 |
| 12/10/2012 | revise expert memo; conf w paralegal and look for prior memo. | 0 | 15 |
| 11/21/2012 | REview letter from r's physician; conf with inv. | 0 | 10 |
| 11/15/2012 | Review ALJ order. | 0 | 10 |
| 11/14/2012 | TCW atty Paul Erickson. | 0 | 10 |
| 11/14/2012 | TC and LM for atty Erickson; conf with gen counsel re: sealing records; conf | 1 | 0 |
| 11/13/2012 | formal hearing. | 6 | 15 |
| 11/12/2012 | TCW ALJ and R. re: motion to adjourn. | 0 | 20 |
| 11/12/2012 | Review exhibits and outline for trial; conf with witnesses prehearing; conduct | 5 | 40 |
| 11/9/2012 | Conf with paralegal; continue trial preparation; TCW Jenae Wittman. | 4 | 10 |
| 11/8/2012 | Trial preparation; meet with expert; TCW Atty Eldridge; TC and LM for Jenae | 4 | 55 |
| 11/7/2012 | TCW Les Newhouse; TC and LM for J. Wittman; prepare for trial. | 3 | 55 |
| 11/6/2012 | TCW Ziebart and Newhouse; review and respond to email from Ziebart; | 7 | 10 |
| 11/5/2012 | Prep direct exam for Ziebart and Newhouse; TCW Ziebart; scan and email | 3 | 10 |
| 11/2/2012 | Review order from ALJ re motion to order facts. | 0 | 10 |
| 11/2/2012 | conf with paralegal re: filing and email to alj and R. | 0 | 10 |
| 11/2/2012 | REview emails from ALJ and R; email response to ALJ and R.; review | 3 | 0 |
| 11/1/2012 | Review ALJ order. | 0 | 5 |
| 10/31/2012 | Review deposition of expert. | 1 | 5 |
| 10/30/2012 | TCW expert re: pre-trial meeting. | 0 | 15 |
| 10/29/2012 | TC from ALJ's office re: transcript; brief review of hearing transcript. | 0 | 15 |
| 10/29/2012 | Review/respond to email from court reporter. | 0 | 5 |
| 10/24/2012 | TCW atty eldridge; note to file re: Ziebart cell number. | 0 | 10 |
| 10/23/2012 | email to expert. | 0 | 5 |
| 10/22/2012 | Prepare for motion hearing; review briefs; motion hearing. | 3 | 45 |
| 10/17/2012 | Organize and review exhibits; conf with paralegal; prepare exhibit list and final | 3 | 5 |
| 10/16/2012 | Draft exhibit list; review exhibits and copy. | 0 | 35 |
| 10/15/2012 | Travel to/from Lancaster for deposition and witness preparation meetings; | 9 | 10 |
| 10/12/2012 | Email review; calendar hearing; prepare for deposition of Kim Moore; | 2 | 45 |
| 10/11/2012 | TCW atty eldridge; conf with paralegal re: reserving room. | 0 | 20 |
| 10/9/2012 | review email; brief review of motion reply/brief from r. | 0 | 20 |
| 11/8/2013 | revise response; copies and email to board services, alj and R.; review JL | 1 | 20 |
| 11/5/2013 | finalize draft of response; conf with BC re: revisions. | 4 | 5 |
| 11/4/2013 | review transcripts; draft response. | 5 | 5 |
| 11/1/2013 | work on draft of response to objections; review transcripts and exhibits. | 4 | 10 |
| 10/31/2013 | review objections by R; review alj's pdo; begin draft of response; research re: | 3 | 25 |
| 10/30/2013 | conf with inv. | 0 | 5 |
| 9/24/2013 | review email from R; email to R and ALJ; TCW board services. | 0 | 10 |
| 8/6/2013 | conf w paralegal. | 0 | 5 |
| 7/15/2013 | review summ jt decision fed claim. | 0 | 25 |
| 7/8/2013 | review and organize pleadings file. | 0 | 10 |
| 7/1/2013 | REview revisions; revise and finalize brief. | 0 | 25 |
| 6/26/2013 | review and revise reply argument; email to SN re: draft; conf with paralegal. | 1 | 50 |
| 6/25/2013 | work on draft of reply brief. | 5 | 25 |
| 6/21/2013 | draft reply argument. | 1 | 0 |
| 6/20/2013 | brief review of r's response argument; conf with inv; conf w paralegal; legal | 3 | 0 |
| 5/16/2013 | revise closing argument and PDO w paralegal; conf with SN. | 1 | 0 |
| 5/15/2013 | revise PDO; conf with paralegal. | 1 | 30 |
| 5/14/2013 | Draft PDO; conf with paralegal re: revisions to closing argument; review | 4 | 55 |
| 5/13/2013 | cofn with paralegal re: revisions. | 0 | 15 |
| 5/13/2013 | draft PDO. | 1 | 35 |
| 5/9/2013 | review and revise closing argument; conf with paralegal re: closing argument; | 2 | 20 |
| 5/8/2013 | Revise and proof read closing argument. | 4 | 20 |
| 5/7/2013 | Review transcripts; finish draft of closing argument. | 3 | 35 |
| 5/6/2013 | review transcripts and exhibits; continue draft of closing argument. | 3 | 45 |
| 5/3/2013 | review transcripts; continue draft of closing argument. | 3 | 15 |
| 5/2/2013 | review transcripts; draft argument. | 2 | 40 |
| 5/1/2013 | review transcripts; draft argument. | 3 | 50 |
| 4/30/2013 | review transcripts; draft argument. | 2 | 45 |
| 4/29/2013 | review transcripts; draft closing argument. | 0 | 35 |
| 4/26/2013 | review transcripts; draft closing argument. | 5 | 0 |

| | | | |
|-----------|--|---|----|
| 4/25/2013 | review trial transcripts; continue draft of argument. | 2 | 15 |
| 4/24/2013 | review expert testimony. | 0 | 20 |
| 4/23/2013 | review transcripts and exhibits; draft argument. | 4 | 25 |
| 4/22/2013 | conf with paralegal re: PDO. | 0 | 5 |
| 4/12/2013 | travel to ebling to return treatise; review expert invoice and give memo auth to | 0 | 35 |
| 4/11/2013 | conf with BC and Ryan Zeinert re: records retention on oral exams. | 0 | 10 |
| 4/5/2013 | organize file. | 0 | 40 |
| 4/4/2013 | TCW atty eldridge and dr. overbeeke; participate in hearing. | 8 | 40 |
| 4/3/2013 | Prep for hearing; conf with expert; TCW atty eldridge; legal research; | 8 | 35 |
| 4/2/2013 | review discovery responses; TCW atty eldridge re: subpoena; prepare for | 3 | 50 |
| 4/2/2013 | email to atty eldridge re: subpoena. | 0 | 5 |

TOTAL PROSECUTING ATTORNEY ## HOURS AND 55 MINUTES HOURS MINUTES
(Based on their average salary and benefits at the Division of Enforcement) **TOTALS 340 55**
A \$61.00 PER HOUR \$20,795.92

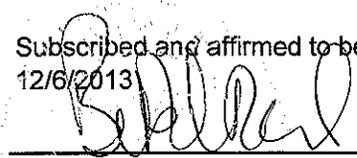
EXPENSE SUMMARY

| | | |
|-------------------------------------|---|--------------------|
| PARALEGAL EXPENSE | Beth Cramton | \$1,604.67 |
| EXPERT WITNESS EXPENSE | Cortney Keo | \$2,850.00 |
| PROSECUTING ATTORNEY EXPENSE | Kim Kluck | \$20,795.92 |
| PARALEGAL EXPENSE | Lori Hoechst | \$12.08 |
| MISCELLANEOUS EXPENSE | Jane Brischke | \$6,170.12 |
| INVESTIGATOR EXPENSE | Hannah Whaley | \$1,524.92 |
| INVESTIGATOR EXPENSE | Kelley Sankbeil | \$62.83 |
| PARALEGAL EXPENSE | Mitali Chatterjee | \$4.83 |
| PROSECUTING ATTORNEY EXPENSE | James Polewski | \$35.58 |
| PROSECUTING ATTORNEY EXPENSE | John Zwieg | \$15.25 |
| PARALEGAL EXPENSE | Cortney Keo | \$166.75 |
| MISCELLANEOUS EXPENSE | Dawn Kalies | \$0.00 |
| MISCELLANEOUS EXPENSE | Mitali Chatterjee | \$0.00 |
| | TOTAL ASSESSABLE COST >>> | \$33,242.95 |



Kim Kluck

Subscribed and affirmed to before me this
12/6/2013



Notary Public

My commission Expires 3/27/16

State of Wisconsin
Before the Medical Examining Board

In the Matter of Disciplinary Proceeding against Sheikh Bashir Ahmed, MD
Division of Enforcement Case Number: 10 Med 201

Response to ORDER 0002781

In response to your billing statement in above referenced order, respondent responds as under:

In August of 2009, Grant regional health center, a rural health center in Lancaster WI, employed respondent as its emergency director and emergency physician.

During the very first week of his working at this rural health center, respondent noticed that this rural health center was controlled by a group comprising of three family physicians: Erin Huebschman, Eric Stader, and Eric Slane. In addition to running their office practices, they were covering the emergency room and the inpatient admission of this rural health center for which they were heavily compensated by this rural health center. These three family physicians were also controlling the hospital medical staff and hospital privilege committees. Though compensated heavily by hospital for their emergency room and inpatient coverage, this family physician group would neither see any patient in emergency room nor allow their admission in hospital if a patient required a local admission. Instead, this family physician group had put their physician assistant by the name of les Newhouse in emergency room who was falsely impersonating as an emergency physician and transferring virtually every patient to surrounding referral hospitals at Dubuque IA, Madison WI, or Rockford IL.

As an emergency director, respondent objected to this illegal practice.

Because of respondent's objection, this family physician group was now bound to actually work for the money this rural health center was paying them for their emergency room and inpatient admission coverage. They were bound to see their patient in emergency room, write history and physical examination of their admitted patients, and manage these patients in hospital. As a result, because of the respondent's objection to their illegal practice, the cozy life

style of this family physician group was disturbed; so they started protesting and complaining against the respondent to hospital administration. They wrote emails to hospital administration asking the administration that they must terminate respondent's employment contract or otherwise they will resign.

During these 12 days of his working at this rural health center, a band of hospital employees revolted against the respondent. This group consisting of individuals bearing the last names Moore, Harrington, Ziebert, Newhouse, Blum, Johnson and streif made. This group made racist and insulting remarks against respondent in front of patients and cooked false and unfounded stories to defame the respondent. They also wrote seditious and hateful emails to the hospital administration. This intolerant group threatened the administration that if they will not remove the respondent from their rural health center with immediate effect, they will resign en-mass.

On the basis of this hateful riot, on August 31, 2009, grant regional health center removed respondent from its rural health center on August 31, 2009 without cause.

Respondent worked at this rural health center for 12 days. Every patient who has been treated by respondent at this rural health center has received the highest quality of competent, ethical, and compassionate medical care from him.

Without any notice to respondent, the family physician group terminated respondent's hospital privileges. For their defense to an unlawful action, this rural health center invented a pretext for respondent's termination. This rural health center then submitted a preposterously false report against respondent to NPDB.

In January of 2011, respondent submitted a legal complaint against grant regional health center in western district of Wisconsin.

Kim Kluck, the attorney for WLB, threatened the respondent that if he will not remove his legal complaint against grant regional health center from the federal court and settle the case with them, she will initiate a disciplinary proceeding against him at Wisconsin Licensing Board. Respondent refused to withdraw his genuine legal complaint against grant regional health center from federal court and Kim Kluck started an unfounded disciplinary investigation against respondent.

Right from the initiation of this investigation, respondent warned Kim Kluck, the prosecuting attorney of WLB, that her investigation is unfounded, discriminative and out rightly illegal. Respondent requested Kluck that if she has any question regarding the patient care provided by

respondent at grant regional health center, at respondent's expense, she must show her criticism to a competent and honest emergency physician in Wisconsin. If that impartial and competent emergency physician offers her an opinion that there has been any lack or error on behalf of respondent in regard to the patient care at grant regional health center, he will withdraw his legal claim against grant regional health center in the federal court and voluntarily subject himself to an investigation by WLB. Kim Kluck never hired or showed her complaint to an unbiased and competent emergency medicine physician. Instead, Kluck hired an openly biased, a court disqualified, and an inexperienced family physician by the name of Megeen Parker to support her illegal and discriminative action. In their fellow feeling to the intolerant group at grant regional health center, Kim Kulck and Megeen Parker openly declared that they will serve as a credibility witness to this group at grant regional health center. To achieve her discriminative and hateful aim, Parker made patently false and manifestly biased allegations and claims against respondent.

As a group, Moore, Harrington, Ziebert, Newhouse, Blum, Johnston and streif, Kluck, and Parker joined hands with an administrative law judge, Jennefer nashold to discriminatively and conspiratorially deprive respondent of his legitimate rights in Wisconsin.

This group comprising of Newhouse, Ziebert, Moore, Harrington, Johnson, Blum, Strief, Parker, Kluck, and Nashold, acted in varied roles and capacities to conduct a conspiracy against respondent. Either directly or indirectly, they even subscribed to a criminal fraud wherein they destroyed the medical records of two patients HM, and BK at grant regional hospital to achieve their illicit objective.

Since this case has acquired a criminal dimension, I request you to submit this statement along with your billing statement to attorney General of Wisconsin. After proper and thorough investigation, Attorney general of Wisconsin will determine as to who should bear the respondent's and the Wisconsin licensing board's cost of this unfounded and discriminative investigation and this criminal fraud against respondent. In a separate statement, I shall submit you a separate bill claiming my cost for this unfounded, discriminative, and conspiratorial fraud against respondent by WLB attorneys: Kim Kluck and Jennifer Nashold.

SD: // Bashir Ahmed Sheikh, MD

Respondent

**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: January 6, 2014 | |
| 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 ▪ 08 work days before the meeting for all others | | | |
| 3) Name of Board, Committee, Council, Sections: Medical Examining Board | | | |
| 4) Meeting Date: January 15, 2015 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? Order Fixing Costs In the Matter of Disciplinary Proceedings against Bashir A. Sheikh, M.D., Case No. 0002781 | |
| 7) Place Item in: <input type="checkbox"/> Open Session <input checked="" type="checkbox"/> Closed Session <input type="checkbox"/> Both | 8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <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: <p style="margin-left: 40px;">The Board must consider the complainant's response to the respondent's objections regarding costs.</p> | | | |
| 11) Shawn Leatherwood Signature of person making this request | | Authorization January 6, 2014 Date | |
| Supervisor (if required) | | Date | |
| Bureau 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 Board Services Bureau 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
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST : DHA CASE NO. SPS-12-0010
: DLSC CASE NO. 10 MED 201
BASHIR A. SHEIKH, M.D., :
RESPONDENT. :

COMPLAINANT'S RESPONSE TO RESPONDENT'S OBJECTION TO COSTS

Kim M. Kluck, attorney for Complainant, Wisconsin Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), 1400 East Washington Avenue, Madison, Wisconsin, files this Response to Respondent's letter objecting to costs by Bashir A. Sheikh, M.D.

ARGUMENT

In Respondent's letter objecting to costs, he reiterates his previous contention that a conspiracy based on discrimination gave rise to the allegations in this case. Those baseless allegations of a discriminatory conspiracy have previously been addressed by Complainant in its Response to Respondent's Objections and will not be re-stated here. He makes these arguments, again, unburdened by the actual facts of the case. Respondent's objections to costs are without merit as will be explained below.

The Department and this Board have the authority to assess costs pursuant to Wis. Stat. section 440.22(2), which provides, in pertinent part, as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, *assess all or part of the costs* of the proceeding against the holder.

(Emphasis added).

The factors to be considered in assessing costs are: 1) the number of counts charged, contested and proven; 2) the nature and seriousness of the misconduct; 3) the level of discipline sought by the prosecutor; 4) the respondent's cooperation with the disciplinary process; 5) prior discipline, if any; 6) the fact that the Department of [Safety and Professional Services] is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and 7) any other relevant circumstances. See *In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008).

In the present case, the ALJ recommended that Respondent pay 75% of the costs in this matter after she appropriately examined the number of counts charged and the number of counts proven as well as the seriousness of the conduct at issue. Complainant charged Respondent with four counts of standard of care violations and one count of improper medical documentation. The four counts of standard of care allegations relate to four different patients: Patient S.H., Patient D.M., Patient H.M. and Patient B.K. Each of those counts contained sub-allegations of specific conduct. The record keeping allegation related to Patient H.M.

The ALJ found that Complainant had failed to prove a standard of care violation relating to one of the four patients, Patient S.H. However, the ALJ did find that Complainant had proven standard of care violations relating to the other three patients and that a medical record keeping violation had been proven as well.

In balancing the number of violations charged (five) as opposed to the number of violations proven (four), the ALJ's apportionment and recommendation that only 75% of the costs be assessed against Respondent is appropriate. This is true particularly in light of the fact

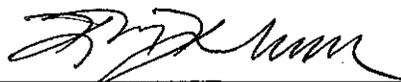
of the standard of care violations, three of four, were proven. As such, this Board should adopt the ALJ's apportionment of costs and recommendation that 75% of the costs be assessed against Respondent

Respondent next contends that this Board should forward this matter to the "attorney General of Wisconsin" to determine the costs to be imposed. There is no legal basis for this request as Wis. Stat. section 440.22(2) contains no provision for the Wisconsin Department of Justice or the Office of the Attorney General to determine the level of costs to impose. Those duties are specifically delegated to "the department, examining board, affiliated credentialing board or board." The well-established legal canon of "expressio unius est exclusio alterius" (the expression of one thing excludes another) mandates that only those entities specifically enumerated by the legislature may assess costs in a disciplinary matter such as this. Respondent's argument that the Office of the Attorney General assess the amount of costs to be imposed should be rejected as having no legal merit as that entity was specifically excluded from the statute.

CONCLUSION

Based on the foregoing, Complainant requests that the Board reject Respondent's objections to costs and assess 75% of the costs of these proceedings against Respondent as recommended by the ALJ.

Respectfully submitted this 6th day of January, 2014.



Kim M. Kluck
State Bar Number 1047485
Prosecuting Attorney
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190
Tel. (608) 266-9925

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

AGENDA REQUEST FORM

| | | | |
|--|---|---|--|
| 1) Name and Title of Person Submitting the Request: Daniel Agne, Bureau Assistant on behalf of Tom Ryan, Executive Director | | 2) Date When Request Submitted: 1/8/14 | |
| | | Items will be considered late if submitted after 4:30 p.m. on the deadline date: <ul style="list-style-type: none"> ▪ 8 business days before the meeting for paperless boards ▪ 14 business days before the meeting for all others | |
| 3) Name of Board, Committee, Council, Sections: Medical Examining Board | | | |
| 4) Meeting Date: 1/15/14 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? Study on the Potential Consolidation of the Department of Agriculture, Trade and Consumer Protection with the DSPS (DART) Report - Discussion of Findings and Recommendations | |
| 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 and discussion of Dept of Administration's study on potentially consolidating DATCP and DSPS into the "Department of Agriculture, Regulation and Trade." Also, review related email from Tom Engels. | | | |
| 11) Authorization | | | |
| Daniel Agne 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. | | | |

From: [Engels, Tom - DSPS](#)
Subject: DART Study Report
Date: Monday, December 30, 2013 2:30:10 PM

To: DSPS Staff
From: Tom Engels, DSPS Assistant Deputy Secretary

The Department of Administration has prepared a report on the potential consolidation of the Department of Agriculture, Trade and Consumer Protection with the Department of Safety and Professional Services, in response to requirements of 2013 Wisconsin Act 20, Section 9101(3s).

The 2013-15 biennial budget required the Department of Administration to conduct a study to determine the appropriateness of combining the functions currently performed by the Department of Agriculture, Trade and Consumer Protection with services provided by the Department of Safety and Professional Services.

Here is a link to the full report your reference

http://legis.wisconsin.gov/lfb/jfc/reports/Documents/2013_12_26_DART%20Study.pdf

Below are the report's conclusions and recommendations, the first of which recommends against a consolidation of the two departments. I have underlined a sentence in the first bullet point which reflects the tremendous job done by staff here at DSPS.

Should you have any questions regarding the report, please do not hesitate to contact me.

Conclusions and Recommendations

- **Do Not Consolidate Agencies:** Due to limited overlap between agency customers, customer sentiment against a merger, potential administrative difficulties presented by the potential merger and limited potential for savings, the agencies should not be merged. A merger could risk losing the generally high performance ratings of both agencies, most notably the 65.8 percent of respondents that rated their interactions with the Department of Safety and Professional Services as "Good" or "Very Good".
- **Move the Veterinary Examining Board to the Department of Agriculture, Trade and Consumer Protection:** Due to the historical relationship between the Veterinary Board and the department, as well as the close relationship with the veterinary profession, the Veterinary Examining Board should be transferred.
- **Improve Board Staffing and Examine Board Powers:** In response to feedback from impacted stakeholder groups, the study recommends improvements to board staffing, training and document management. The Department of Safety and Professional Services began making changes to improve these areas in 2012, which may have not yet been reflected in stakeholder sentiment. Additionally, the study recommends that the powers and duties of existing examining and advisory boards should be examined, to standardize board practices, meeting schedules, actions on potential licenses and other issues. The study also recommends an examination of the overall practice of state licensure of professions.

- **Licensing Fees Charged by the Department of Safety and Professional Services should be Reexamined:** Most fees charged by the department are set administratively via a fee study, reviewed by the Joint Committee on Finance. These fees should be reexamined through the existing fee study process, with current budget assumptions.
- **Continue Agency Improvements on Document Management, Electronic Licensure and Electronic Communications:** The two departments have projects underway to improve document management, electronic licensing and customer communications. These projects should be continued, in close consultation with each other, other state agencies and the private sector.
- **The Department of Safety and Professional Services is a vital Point of Contact between the state and the public:** Over 380,000 individuals are licensed by the department in order to work in their chosen professions. Additionally, the department reviews the plans of most commercial buildings constructed in the state. This makes the agency one of the primary points of contact for state citizens. Efforts should be made to improve the customer service experience with the agency through additional LEAN Government/Six Sigma initiatives.

Tom Engels | Assistant Deputy Secretary | Wisconsin Dept. of Safety and Professional Services | 608.266.8608



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

SCOTT WALKER
GOVERNOR

MIKE HUEBSCH
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December 26, 2013

Senator Alberta Darling Co-Chair
Joint Committee on Finance
Room 317 East, State Capitol
Madison, WI 53707

Representative John Nygren, Co-Chair
Joint Committee on Finance
Room 309 East, State Capitol
Madison, WI 53708

Dear Senator Darling and Representative Nygren:

Enclosed please find a study on the consolidation of the Department of Safety and Professional Services and the Department of Agriculture, Trade and Consumer Protection, which was prepared in response to section 9101(3s) of 2013 Wisconsin Act 20.

The study consists of two documents. The first is the narrative of the study with appendices. The second document details the methodology and results of the survey used for stakeholder outreach. As the study does not recommend a merger of the two agencies, no draft legislation has been prepared and recommendations for the structure or makeup of a potential Department of Agriculture, Regulation and Trade are not included.

Please contact Andrew Hitt, Assistant Deputy Secretary, at 608-261-2299 or Andrew.Hitt@wisconsin.gov if you have any questions about this matter.

Sincerely,

Mike Huebsch
Secretary

cc: Members of Joint Committee on Finance

2014

Tyler Byrnes
Nancy Mistele
Joe Knilans

**SURVEY METHODOLOGY AND RESULTS -
STUDY ON CONSOLIDATION OF THE
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION WITH THE
DEPARTMENT OF SAFETY AND PROFESSIONAL
SERVICES**

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| Stakeholder Groups Contacted | 34 |

Survey Construction

The Legislature requested a study of a potential merger of the Department of Agriculture, Trade and Consumer Protection with the Department of Safety and Professional services but did not specify a method for gathering input.

A decision was made to electronically survey a broad range of stakeholders including individual license and permit holders, stakeholder group representatives and other business organizations in order to reach a broad and diverse audience, gather opinion and comments in a reasonable period of time and use existing technology to tally and analyze results quickly and efficiently.

The survey tool was designed to drive maximum response, gather data and public opinion on the concept of a merger while allowing state license holders and stakeholders to offer comments about existing services with the agencies and their views on potential changes to the service levels should a merger occur.

With overall guidance from the Legislature, questions were constructed with input from Department of Administration staff and policy analysts, reviewed by DSPS and DATCP personnel and finally vetted by others with experience in developing survey tools. The vetting process ensured consistent style and formatting of questions and potential answers in a manner that did not lead respondents to particular answers or conclusions.

Specific questions were crafted to obtain relevant information from customers that would provide justification for a potential merger, or arguments against the merger, depending on respondent answers to the questions. For instance, asking how much interaction customers have with each of the agencies in question would determine whether there was overlap between the two sets of agency responsibilities.

The survey asked up to 24 questions and respondents were able to quickly answer questions or add greater explanation where necessary. If the respondents rated agency performance as poor or very poor, they were provided space to provide additional comments on the survey. The survey included questions related to their experience with services provided by agencies as well as questions directly related to their opinions of a potential merger. At the end of the survey respondents were able to provide general open-ended responses.

Once the questions were constructed, they were placed into an online survey tool developed by staff with the Department of Administration Division of Enterprise Technology. Respondents were asked to rate various aspects of agency performance for agencies with which they interact.

SURVEY DISTRIBUTION

An electronic survey was used to contact the largest number of stakeholders in the most efficient manner. This survey was sent to impacted board members, stakeholder groups and individual license holders and was publicized via media outlets to attract a broad spectrum of public comment. More than 430,000 people were directly contacted with the survey.

The contact lists were generated by using an email list of DSPTS license holders, email lists generated from the Office of Business Development interactions with Chambers of Commerce and Economic Development Groups as well as business contacts throughout the state. The survey was also electronically distributed through over 350 DATCP and DSPTS identified stakeholder groups with directions to forward the survey to group members.

Links to the on-line survey were sent to email addresses for all the license holders on file with DSPTS, which totaled 428,954 emails. In addition to agency contacts, the survey was also distributed to members of the DATCP and DSPTS attached boards, members of the Legislature, and via the Department of Administration Office of Business Development at various events and through Chambers of Commerce.

The following is the text of the outreach email sent to potential survey respondents.

Outreach Email sent to Survey Respondents

Good morning,

We are contacting you today as we would appreciate your feedback (including feedback from your organizations board and members) about possibly merging the Department of Safety and Professional Services (DSPS) and the Department of Agriculture, Trade and Consumer Protection (DATCP). Your input about how this consolidation may impact you is very valuable to us.

The 2013-15 state budget calls for a study about consolidating these two agencies. DSPS manages the licensing and regulation of professions in health, business and construction trades. They also oversee state building safety codes and provide services related to plan review, permit issuance, building and component inspection, and safety codes. DATCP is responsible for the promotion and regulation of Wisconsin's agriculture industry, including Agriculture Resource Management and Animal Health, as well as the oversight of food safety and consumer protection.

We ask that you complete the survey and forward this email to your members for their response so we can better understand how a potential consolidation may affect you. Your answers and contact information will be kept confidential and will not be used outside of the scope of this survey. All survey results will be tallied for any reporting purposes.

TAKE THE SURVEY – your answers will be kept confidential

Thank you in advance for your participation and input.
Office of Business Development

Note: throughout the survey, you will see the term 'license' which refers to any license, credential, certification, registration or permit. Please view the term to mean the document a state agency issues as a requirement to do business, perform an occupation or specific work activity in the State of Wisconsin.

Survey Results and Survey Questions

The following tables detail the results of the survey that was distributed to nearly 450,000 people. The following tables show the demographic breakdown of the respondents, responses to questions directly related to opinions about a potential merger of the two agencies, and performance related responses. Over three thousand survey respondents indicated that they would like to receive a copy of the final report.

| Table 1: Respondents by Profession | | |
|---|--------------------|-------------------------|
| Profession | Respondents | Percent of Total |
| Health Professions | 9,838 | 39.4% |
| No Response | 7,451 | 29.9% |
| Business Professions | 5,194 | 20.8% |
| Trades Professions | 1,920 | 7.7% |
| Manufactured Housing | 21 | 0.1% |
| Mixed Martial Arts/Boxing | 14 | 0.1% |
| <i>Subtotal</i> | 24,438 | 98.0% |
| More than One Response | | |
| Business Professions; Trades Professions | 210 | 0.8% |
| Health Professions; Business Professions | 187 | 0.7% |
| Health Professions; Trades Professions | 61 | 0.2% |
| Health Professions; Business Professions; Trades Professions | 28 | 0.1% |
| Business Professions; Trades Professions; Manufactured Housing | 9 | 0.0% |
| Trades Professions; Manufactured Housing | 9 | 0.0% |
| Business Professions; Manufactured Housing | 4 | 0.0% |
| Business Professions; Trades Professions; Mixed Martial Arts/Boxing | 1 | 0.0% |
| Health Professions; Business Professions; Trades Professions; Manufactured Housing; Mixed Martial Arts/Boxing | 1 | 0.0% |
| Health Professions; Mixed Martial Arts/Boxing | 1 | 0.0% |
| <i>Subtotal</i> | 511 | 2.1% |
| Grand Total | 24,949 | 100.0% |

| County | Respondents | Percentage | County | Respondents | Percentage |
|-----------------------------|--------------------|-------------------|---------------|--------------------|-------------------|
| None Indicated | 8,340 | 33.4% | Marathon | 405 | 1.6% |
| Adams | 54 | 0.2% | Marinette | 105 | 0.4% |
| Ashland | 48 | 0.2% | Marquette | 38 | 0.2% |
| Barron | 115 | 0.5% | Menominee | 2 | 0.0% |
| Bayfield | 57 | 0.2% | Milwaukee | 2,102 | 8.4% |
| Brown | 687 | 2.8% | Monroe | 108 | 0.4% |
| Buffalo | 34 | 0.1% | Oconto | 105 | 0.4% |
| Burnett | 43 | 0.2% | Oneida | 144 | 0.6% |
| Calumet | 133 | 0.5% | Outagamie | 443 | 1.8% |
| Chippewa | 209 | 0.8% | Ozaukee | 342 | 1.4% |
| Clark | 62 | 0.2% | Pepin | 26 | 0.1% |
| Columbia | 188 | 0.8% | Pierce | 67 | 0.3% |
| Crawford | 55 | 0.2% | Polk | 93 | 0.4% |
| Dane | 2,518 | 10.1% | Portage | 186 | 0.7% |
| Dodge | 225 | 0.9% | Price | 51 | 0.2% |
| Door | 117 | 0.5% | Racine | 422 | 1.7% |
| Douglas | 103 | 0.4% | Richland | 64 | 0.3% |
| Dunn | 119 | 0.5% | Rock | 348 | 1.4% |
| Eau Claire | 362 | 1.5% | Rusk | 24 | 0.1% |
| Florence | 10 | 0.0% | Saint Croix | 204 | 0.8% |
| Fond du Lac | 308 | 1.2% | Sauk | 190 | 0.8% |
| Forest | 15 | 0.1% | Sawyer | 58 | 0.2% |
| Grant | 117 | 0.5% | Shawano | 83 | 0.3% |
| Green | 150 | 0.6% | Sheboygan | 289 | 1.2% |
| Green Lake | 57 | 0.2% | Taylor | 41 | 0.2% |
| Iowa | 79 | 0.3% | Trempealeau | 66 | 0.3% |
| Iron | 23 | 0.1% | Vernon | 73 | 0.3% |
| Jackson | 46 | 0.2% | Vilas | 86 | 0.3% |
| Jefferson | 239 | 1.0% | Walworth | 246 | 1.0% |
| Juneau | 49 | 0.2% | Washburn | 62 | 0.2% |
| Kenosha | 284 | 1.1% | Washington | 437 | 1.8% |
| Kewaunee | 61 | 0.2% | Waukesha | 1,468 | 5.9% |
| La Crosse | 409 | 1.6% | Waupaca | 132 | 0.5% |
| Lafayette | 50 | 0.2% | Waushara | 58 | 0.2% |
| Langlade | 59 | 0.2% | Winnebago | 436 | 1.7% |
| Lincoln | 66 | 0.3% | Wood | 237 | 0.95% |
| Manitowoc | 217 | 0.9% | | | |
| Counties Represented | | 72 | | | |
| Total Respondents | | 24,949 | | | |

| Table 3: Respondents by Reason for Agency Contact | | |
|--|--------------------|-------------------------|
| Reason for Contact | Respondents | Percent of Total |
| Obtain or renew an occupational license | 16,921 | 65.5% |
| None of the Above | 2,880 | 11.1% |
| Obtain or renew an occupational license; Register my business | 1,162 | 4.5% |
| Obtain or renew an occupational license; Obtain a permit for a specific activity | 611 | 2.4% |
| Obtain or renew an occupational license; Register my business; Obtain a permit for a specific activity | 503 | 1.9% |
| Other with significant Agency contact | 462 | 1.8% |
| Obtain a permit for a specific activity | 384 | 1.5% |
| Register my business | 355 | 1.4% |
| Obtain or renew an occupational license; Other with significant Agency contact | 314 | 1.2% |
| I am a member of a Board or Council affiliated with an Agency | 246 | 1.0% |
| I am a Representative of a Trade Association with interests to an Agency | 207 | 0.8% |
| Multiple Responses - Other | 904 | 3.5% |
| Grand Total | 24,949 | 100.0% |

| Source of Contact | Respondents | Percent of Total |
|--|--------------------|-------------------------|
| License Holders | 23,438 | 93.9% |
| Other via Office of Business Development | 497 | 2.0% |
| DSPS Stakeholders | 336 | 1.3% |
| Legislature | 173 | 0.7% |
| Boards and Councils | 147 | 0.6% |
| DOA/Wisconsin Website | 128 | 0.5% |
| Not Available | 39 | 0.2% |
| Chamber via Office of Business Development | 33 | 0.1% |
| Bus Development via Office of Business Development | 20 | 0.1% |
| DATCP Lists | 12 | 0.0% |
| DSPS Lists | 8 | 0.0% |
| Lt. Governor Lists | 2 | 0.0% |
| Cooperative Network | 1 | 0.0% |
| Grand Total | 24,949 | 100.0% |

| Table 5: Categorized responses to the question: How many full time people do you employ? | | Categorized responses to the question: How many part time people do you employ? | |
|---|--------------------|--|--------------------|
| Employees | Respondents | Employees | Respondents |
| Zero | 573 | Zero | 980 |
| Between 1-10 Employees | 1,063 | Between 1-10 Employees | 829 |
| Between 11-50 Employees | 224 | Between 11-50 Employees | 91 |
| Between 51-100 Employees | 53 | Between 51-100 Employees | 10 |
| Between 101-1000 Employees | 51 | Between 100-1000 Employees | 26 |
| Over 1001 Employees | 10 | Over 1001 Employees | 2 |
| <i>Subtotal</i> | <i>1,974</i> | <i>Subtotal</i> | <i>1,938</i> |
| No response | 22,975 | No response | 23,011 |
| Total | 24,949 | Total | 24,949 |

Survey Responses – Direct Questions about the Potential Merger

The following tables show the responses to questions directly related to a potential merger of the two agencies. These questions were asked of all respondents. Responses to the question "If consolidation results in lower costs to the agency, how would you want the savings used?" did not provide useful data because too many individuals selected the "other" category. Specific responses are available upon request.

| Table 6: Do you believe there should be one agency responsible for all licensing and permitting in Wisconsin? | | |
|--|--------------------|-------------------|
| Response | Respondents | Percentage |
| No Response | 4,247 | 17.0% |
| Definitely No | 1,408 | 5.6% |
| Probably No | 1,968 | 7.9% |
| Not Sure | 2,917 | 11.7% |
| Probably Yes | 5,861 | 23.5% |
| Definitely Yes | 8,548 | 34.3% |
| Total Respondents | 24,949 | 100.0% |

| Table 7: Do you believe there should be one agency responsible solely for Agriculture and food safety in Wisconsin? | | |
|--|--------------------|-------------------|
| Response | Respondents | Percentage |
| No Response | 4,248 | 17.0% |
| Definitely No | 875 | 3.5% |
| Probably No | 1,177 | 4.7% |
| Not Sure | 4,377 | 17.5% |
| Probably Yes | 5,855 | 23.5% |
| Definitely Yes | 8,417 | 33.7% |
| Total Respondents | 24,949 | 100.0% |

Table 8: How do you believe a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would affect the services to you as a license holder?

| Response | Respondents | Percentage |
|--------------------------|--------------------|-------------------|
| No Response | 4,430 | 17.8% |
| Greatly improve service | 192 | 0.8% |
| Improve service somewhat | 760 | 3.0% |
| Not sure | 8,308 | 33.3% |
| Reduce service somewhat | 6,270 | 25.1% |
| Greatly reduce service | 4,989 | 20.0% |
| Total Respondents | 24,949 | 100.0% |

Table 9: Do you believe that consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection will result in savings?

| Response | Respondents | Percentage |
|--------------------------|--------------------|-------------------|
| No Response | 4,352 | 17.4% |
| Definitely No | 1,401 | 5.6% |
| Probably No | 5,319 | 21.3% |
| Not Sure | 6,245 | 25.0% |
| Probably Yes | 6,209 | 24.9% |
| Definitely Yes | 1,423 | 5.7% |
| Total Respondents | 24,949 | 100.0% |

Table 10: If no savings were found from a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would you support the general concept of consolidation?

| Response | Respondents | Percentage |
|--------------------------|--------------------|-------------------|
| No Response | 4,375 | 17.5% |
| Definitely No | 7,191 | 28.8% |
| Probably No | 6,614 | 26.5% |
| Not Sure | 3,532 | 14.2% |
| Probably Yes | 2,364 | 9.5% |
| Definitely Yes | 873 | 3.5% |
| Total Respondents | 24,949 | 0.0% |

Performance Evaluation Questions – DATCP

These tables detail the performance evaluations of DATCP. Respondents were only asked these questions if they listed DATCP as an agency with which they do business.

| Table 11: DATCP - How would you rate your overall experience with the agency? | | |
|--|--------------|-------------|
| Very Good | 309 | 19.9% |
| Good | 562 | 36.2% |
| Average | 436 | 28.1% |
| Poor | 53 | 3.4% |
| Very Poor | 24 | 1.5% |
| No opinion/unsure | 169 | 10.9% |
| Total | 1,553 | 100% |
| Not Asked/No Response | | 23,396 |

| Table 12: DATCP - How would you rate the licensing process? | | |
|--|--------------|-------------|
| Very Good | 228 | 15.0% |
| Good | 510 | 33.6% |
| Average | 413 | 27.2% |
| Poor | 65 | 4.3% |
| Very Poor | 17 | 1.1% |
| No opinion/unsure | 285 | 18.8% |
| Total | 1,518 | 100% |
| Not Asked/No Response | | 23,431 |

| Table 13: DATCP - After submitting your application, what length of time did you wait for your license? | | |
|--|--------------|-------------|
| 3 or less business days | 202 | 16.7% |
| 4 - 7 business days | 421 | 34.9% |
| 8 - 29 business days | 468 | 38.8% |
| 30 days or longer | 115 | 9.5% |
| Total | 1,206 | 100% |
| Not Asked/No Response | | 23,743 |

Table 14: DATCP How satisfied are you with the time it takes to receive your license after you apply?

| | | |
|-----------------------|--------------|-------------|
| Very satisfied | 385 | 28.5% |
| Somewhat satisfied | 364 | 26.9% |
| No opinion | 449 | 33.2% |
| Somewhat dissatisfied | 100 | 7.4% |
| Very dissatisfied | 53 | 3.9% |
| Total | 1,351 | 100% |
| Not Asked/No Response | 23,598 | |

Table 15: DATCP - How much value do you believe there is relative to fees paid to be a license holder?

| | | |
|-----------------------|--------------|-------------|
| Good Value | 253 | 18.3% |
| Some Value | 373 | 26.9% |
| Not Sure | 367 | 26.5% |
| Minimal Value | 305 | 22.0% |
| No Value | 87 | 6.3% |
| Total | 1,385 | 100% |
| Not Asked/No Response | 23,564 | |

Table 16: DATCP - How frequently, if at all, should you be required to renew your license?

| | | |
|-------------------------------|--------------|-------------|
| Renew more frequently | 13 | 1.0% |
| Leave as is | 805 | 59.7% |
| Renew less frequently | 427 | 31.7% |
| Do not require renewal at all | 104 | 7.7% |
| Total | 1,349 | 100% |
| Not Asked/No Response | 23,600 | |

Table 17: DATCP - What is your opinion of the continuing education requirements, if any, for your license?

| | | |
|-----------------------------|--------------|-------------|
| Increase the CE requirement | 75 | 5.5% |
| Ok as is | 710 | 51.6% |
| No CE is required now | 184 | 13.4% |
| No opinion | 110 | 8.0% |
| Reduce the CE requirement | 161 | 11.7% |
| Do not require CE | 93 | 6.8% |
| Other | 43 | 3.1% |
| Total | 1,376 | 100% |
| Not Asked/No Response | 23,573 | |

Performance Evaluation Questions – DSPTS

These tables detail the performance evaluations of DSPTS. Respondents were only asked these questions if they listed DSPTS as an agency with which they do business.

| Table 18: DSPTS - How would you rate your overall experience with the agency? | | |
|--|---------------|-------------|
| Very Good | 3,986 | 24.2% |
| Good | 6,850 | 41.6% |
| Average | 4,047 | 24.6% |
| Poor | 626 | 3.8% |
| Very Poor | 184 | 1.1% |
| No opinion/unsure | 772 | 4.7% |
| Total | 16,465 | 100% |
| Not Asked/No Response | | 8,484 |

| Table 20: DSPTS - How would you rate the licensing process? | | |
|--|---------------|-------------|
| Very Good | 4,320 | 26.4% |
| Good | 6,699 | 40.9% |
| Average | 4,007 | 24.5% |
| Poor | 783 | 4.8% |
| Very Poor | 188 | 1.1% |
| No opinion/unsure | 385 | 2.4% |
| Total | 16,382 | 100% |
| Not Asked/No Response | | 8,567 |

| Table 21: DSPTS - After submitting your application, what length of time did you wait for your license? | | |
|--|---------------|-------------|
| 3 or less business days | 3,557 | 22.8% |
| 4 - 7 business days | 4,885 | 31.3% |
| 8 - 29 business days | 5,358 | 34.3% |
| 30 days or longer | 1,830 | 11.7% |
| Total | 15,630 | 100% |
| Not Asked/No Response | | 9,319 |

| Table 22: DSPS - How satisfied are you with the time it takes to receive your license after you apply? | | |
|---|---------------|-------------|
| Very satisfied | 6,489 | 40.5% |
| Somewhat satisfied | 4,154 | 26.0% |
| No opinion | 3,236 | 20.2% |
| Somewhat dissatisfied | 1,414 | 8.8% |
| Very dissatisfied | 713 | 4.5% |
| Total | 16,006 | 100% |
| Not Asked/No Response | | 8,943 |

| Table 24: DSPS - How much value do you believe there is relative to fees paid to be a license holder? | | |
|--|---------------|-------------|
| Good Value | 3,790 | 23.3% |
| Some Value | 4,502 | 27.7% |
| Not Sure | 3,722 | 22.9% |
| Minimal Value | 3,516 | 21.6% |
| No Value | 726 | 4.5% |
| Total | 16,256 | 100% |
| Not Asked/No Response | | 8,693 |

| Table 24: DSPS - How frequently, if at all, should you be required to renew your license? | | |
|--|---------------|-------------|
| Renew more frequently | 111 | 0.7% |
| Leave as is | 9,981 | 60.9% |
| Renew less frequently | 5,548 | 33.9% |
| Do not require renewal at all | 737 | 4.5% |
| Total | 16,377 | 100% |
| Not Asked/No Response | | 8,572 |

| Table 25: DSPS - What is your opinion of the continuing education requirements, if any, for your license? | | |
|--|---------------|-------------|
| Increase the CE requirement | 864 | 5.3% |
| Ok as is | 8,844 | 53.9% |
| No CE is required now | 2,388 | 14.6% |
| No opinion | 588 | 3.6% |
| Reduce the CE requirement | 1,780 | 10.9% |
| Do not require CE | 1,131 | 6.9% |
| Other | 798 | 4.9% |
| Total | 16,393 | 100% |
| Not Asked/No Response | | 8,556 |

Survey Questions and Answers as seen by Respondents.

The following are print-screens that were seen by survey respondents when they took the survey. Note that all survey respondents did not answer performance evaluation questions on all agencies.

Page 1

State Agency Involvement

My primary purpose for contact with an agency is: Select at least 1 and no more than 6.

- Obtain or renew an occupational license
- Register my business
- Obtain a permit for a specific activity
- I am a member of a Board or Council affiliated with an Agency
- I am a Representative of a Trade Association with interests to an Agency
- Other with significant Agency contact
- None of the Above

Page 2

Background Information

In which county do you reside?

To do business in Wisconsin, I have contact with the following agencies: Select at least 1 and no more than 3.

- Department of Safety and Professional Services (DSPS)
- Department of Agriculture, Trade and Consumer Protection (DATCP)
- Other agencies
- None

Page 3

Additional Agencies

Select additional agencies Select no more than 5.

- Children and Families, Department of

- Financial Institutions, Department of
- Health Services, Department of
- Insurance, Office of the Commissioner of
- Natural Resources, Department of
- Public Instruction, Department of
- Revenue, Department of
- Workforce Development, Department of
- Not on list, please specify

Enter Department Name

Page 4

Employee Count

In which county is your business located?

-- None --

How many full time people do you employ?

How many part time people do you employ?

Page 5

Profession or Industry

What best represents your profession or industry sector

- Health Professions
- Business Professions
- Trades Professions
- Manufactured Housing
- Mixed Martial Arts/Boxing

Page 6

Trade Professions

Select category.

- | | | |
|---|---|-------------------------------------|
| <input type="checkbox"/> Fire Sprinkler | <input type="checkbox"/> Dwellings, Structures, Sites | <input type="checkbox"/> Mechanical |
| <input type="checkbox"/> Blasting | <input type="checkbox"/> Conveyance | <input type="checkbox"/> Electrical |
| <input type="checkbox"/> Plumbing | <input type="checkbox"/> Inspection | |

Page 7

Agriculture/Food Industry Professions

Select license

- No license or permit required
- Animal Control Facility (eff. 6/1/2011)
- Animal Dealer License
- Animal Food Processor License
- Animal Import Permit (certain animals)
- Animal Market License
- Animal Shelter (eff. 6/1/2011)
- Animal Transport Vehicle (animal dealers, markets and truckers)
- Animal Trucker License
- Animals Diseased; Permit to Move
- Apiary Inspection Certificate; Interstate Movement
- Bulk Milk Tanker; Grade A Permit
- Bulk Milk Tanker; License to Operate
- Bulk Milk Weigher and Sampler License
- Butter Grader License
- Buttermaker License
- Cattle and Bison; Import Permit
- Cattle/Goats; Johne's Disease Herd Classification
- Cattle; Burcellosis-Free Herd Certification
- Cattle; Johne's Disease Vaccination Approval
- Cattle; Tuberculosis-Free Herd Certificate
- Cheese Grader License
- Cheese Logo (Wisconsin); Permit to Use
- Cheesemaker License

- Christmas Tree Grower License
- Dairy Farm; Grade A Permit
- Dairy Farm; Milk Producer License
- Dairy Plant - Grade A BMT Cleaning Facility
- Dairy Plant License
- Dairy Plant; Grade A Permit
- Dating Service
- Dead Animal Collector License
- Dead Animals; Carcass Dealer Registration
- Dead Animals; Transport Vehicle Permit
- Deer and Elk (Farm-Raised); Brucellosis Free Herd
- Deer and Elk (Farm-Raised); CWD Herd Status Program
- Deer and Elk (Farm-Raised); Herd Registration
- Deer and Elk (Farm-Raised); Hunting Preserve Registration Certificate
- Deer and Elk (Farm-Raised); TB Accredited Free Certification
- Deer and Elk (Farm-Raised); TB Qualified Herd Certification
- Deer and Elk; Import Permit
- Dog Breeder (eff. 6/1/2011)
- Dog Breeding Facility (eff. 6/1/2011)
- Dog Dealer (eff. 6/1/2010)
- Dog Dealer; Out-of-State (eff. 6/1/2011)
- Equine Quarantine Station; Permit
- Feed (Commercial); License to Manufacture or Distribute
- Feedlot (Approved Import Feedlot); Permit
- Fertilizer Product <24% NPK; Permit
- Fertilizer; License to Manufacture or Distribute
- Fish Farm Registration
- Fish Import Permit
- Fitness Center
- Food Marketing Permit (temporary permit for non-conforming label)
- Food or Farm Product Grader; License
- Food Processing Plant License (Wholesale)
- Food Retail Inspection; Agent County or Municipality
- Food Retail License
- Food Warehouse License

- Fur Farm
- Future Service Plan (Buyers Club)
- Ginseng Grower and Dealer Registration
- Goats; Burcellosis-Free Herd Certificate
- Goats; Tuberculosis-Free Herd Certificate
- Grain Dealer License
- Grain Warehouse Keeper License
- Grease Processor License
- Honey Producer - Certified
- Humane Officer Certification
- Industry Bulk Milk Truck / Tanker Inspector - Appointed
- Laboratory Analyst Certification (Dairy, Food and Water Labs)
- Laboratory Certification (Dairy, Food and Water Labs)
- Laboratory; Milk Screening Test Approval
- Landspreading Permit; Soils Containing Spilled Agrichemicals
- Liming Materials; Approval to Sell by Volume
- Liming Materials; License to Sell
- Livestock Premises Registration
- Livestock; Brand Registration
- Livestock; Permit to Move from Slaughter
- Maple Sap Processor Registration
- Meat Broker or Distributor Registration
- Meat Establishment License
- Meat; Mobile Slaughter or Processing; Registration Certificate
- Milk and Cream Tester License
- Milk Contractor License
- Milk Distributor License
- Mobile Air Conditioners; repair or Service Business; Registration
- Mobile Air Conditioners; Technician Registration
- Nursery Dealer License
- Nursery Grower License
- Pasteurizer Operator -- not a license or permit
- Pesticide Applicator Certification; Commercial
- Pesticide Applicator Certification; Private
- Pesticide Commercial Application Business License

- Pesticide Commercial Applicator (Individual) License
- Pesticide Dealer-Distributor License
- Pesticide Emergency Use Permit
- Pesticide Experimental Use Permit
- Pesticide Manufacturer & Labeler License
- Pesticide Special Local Need Registration
- Pesticide Special Use Permit
- Plant Health (Phyto Sanitary) Certificate
- Plant Pest (or Biological Control Agent); Permit to Move or Release
- Poultry; Certified Pullorum Tester (National Poultry Improvement Plan)
- Poultry; Disease-Free Flock Certification (National Poultry Improvement Plan)
- Poultry; Wisconsin Associate Flock Certification
- Poultry; Wisconsin Tested Flock Certification
- Public Warehouse Keeper License
- Renderer License
- Seed Labeler License
- Sheep; Brucella Ovis-Free Certificate
- Soil and Plant Additive; License to Sell
- Soil and Plant Additive; Product Permit
- Swine; Brucellosis-Free Herd Certificate
- Swine; Pseudorabies - Monitored Herd Certification
- Swine; Pseudorabies Qualified Negative Grow-Out Herd Certification
- Swine; Pseudorabies Vaccination Permit
- Swine; Pseudorabies Qualified Negative Herd Certification
- Telephone Solicitors Registration (Wisconsin "No Call" Program)
- Time-Share Seller; Security Requirement
- Vegetable Contractor License
- Veterinarian; Certification to Perform Official Disease Control Functions
- Weather Modification License
- Weather Modification Project Permit
- Weight Reduction Center; Security Requirement
- Weights and Measures; Liquid Fuel Vehicle Tank Meter License
- Weights and Measures; LP Gas Meter License
- Weights and Measures; Service Company License
- Weights and Measures; Service Technician Registration

- Weights and Measures; Vehicle or Livestock Scale Permit
- Weights and Measures; Vehicle Scale Operator License

Boxing and Mixed Martial Arts

Select license

- Boxing Contestant
- Boxing or Mixed Martial Arts Judge
- Boxing or Mixed Martial Arts Promoter
- Boxing or Mixed Martial Arts Referee
- Boxing or Mixed Martial Arts Ringside Physician
- Boxing or Mixed Martial Arts Timekeeper
- Mixed Martial Arts Contestant

Business Professions

Select license

- Accountant, Certified Public
- Accounting Corporation or Establishment
- Aesthetician
- Aesthetics Establishment
- Aesthetics Instructor
- Aesthetics School
- Appraiser, Certified General
- Appraiser, Certified Residential
- Appraiser, Licensed
- Architect
- Athlete Agent
- Auction Company
- Auctioneer
- Barber
- Barbering Apprentice

- Barbering Establishment
- Barbering Instructor
- Barbering Manager
- Barbering School
- Cemetery Authority (Licensed)
- Cemetery Authority (Registered)
- Cemetery Preneed Seller
- Cemetery Salesperson
- Certificate of Authorization: Architectural, Engineering or Designer of Engineering Systems Corp.
- Certificate of Authorization: Geology, Hydrology or Soil Science Corp.
- Certified General Appraiser
- Certified Public Accountant
- Certified Residential Appraiser
- Charitable Organizations
- Cosmetology Apprentice
- Cosmetology Establishment
- Cosmetology Instructor
- Cosmetology Manager
- Cosmetology Practitioner
- Cosmetology School
- Crematory Authority
- Designer of Engineering Systems
- Electrologist
- Electrology Establishment
- Electrology Instructor
- Electrology School
- Engineer, Professional
- Firearms Certifier
- Firearms Permit
- Fund-Raising Counsel
- Funeral Director
- Funeral Establishment
- Geologist
- Home Inspector
- Hydrologist

- Interior Designer
- Juvenile Martial Arts Instructor
- Land Surveyor
- Landscape Architect
- Licensed Appraiser
- Manicuring Establishment
- Manicuring Instructor
- Manicuring School
- Manicurist
- Nursing Home Administrator
- Peddler
- Private Detective
- Private Detective/Security Guard Agency
- Private Security Permit
- Professional Employer Group
- Professional Employer Organization
- Professional Engineer
- Professional Fund Raiser
- Real Estate Broker
- Real Estate Business Entity
- Real Estate Salesperson
- Real Estate Salesperson Apprentice
- Soil Scientist
- Timeshare Salesperson
- Warehouse for Cemetery Merchandise

Health Professions

Select license

- Acupuncturist
- Advanced Practice Nurse Prescriber
- Anesthesiologist Assistant
- Art Therapist
- Athletic Trainer

- Audiologist
- Behavior Analyst
- Chiropractic Radiological Technician
- Chiropractic Technician
- Chiropractor
- Clinical Substance Abuse Counselor
- Clinical Supervisor In Training
- Controlled Substances Special Use Authorization
- Dance Therapist
- Dental Hygienist
- Dentist
- Dietitian
- Drug or Device Manufacturer
- Hearing Instrument Specialist
- Independent Clinical Supervisor
- Intermediate Clinical Supervisor
- Licensed Midwives
- Licensed Practical Nurse
- Licensed Radiographer
- Limited X-Ray Machine Operator Permit
- Marriage and Family Therapist
- Massage Therapist or Bodywork Therapist
- Music Therapist
- Nurse - Midwife
- Occupational Therapist
- Occupational Therapy Assistant
- Optometrist
- Perfusionist
- Pharmacist
- Pharmacy (In State)
- Pharmacy (Out of State)
- Physical Therapist
- Physical Therapist Assistant
- Physician Assistant
- Physician

- Podiatrist
- Prevention Specialist
- Prevention Specialist in Training
- Private Pract. School Psychologist
- Professional Counselor
- Psychologist
- Registered Nurse
- Registered Sanitarian
- Respiratory Care Practitioner
- Sign Language Interpreter
- Sign Language Interpreter (Restricted)
- Social Worker
- Social Worker - Advanced Practice
- Social Worker - Independent
- Social Worker - Licensed Clinical
- Social Worker - Training Certificate
- Speech-Language Pathologist
- Substance Abuse Counselor
- Substance Abuse Counselor in Training
- Veterinarian
- Veterinary Technician
- Wholesale Distributor of Prescription Drugs

Manufactured Homes

Select license

- Manufactured Home Dealer
- Manufactured Home Installer
- Manufactured Home Manufacturer
- Manufactured Home Salesperson
- Manufactured Home Title
- Manufactured Home Community

Trades Professions - Fire Sprinkler

Select license

- Automatic Fire Sprinkler Contractor
- Automatic Fire Sprinkler Contractor – Maintenance
- Automatic Fire Sprinkler Fitter – Maintenance
- Automatic Fire Sprinkler System Apprentice
- Automatic Fire Sprinkler System Tester
- Automatic Fire Sprinkler System Tester Learner
- Journeyman Automatic Fire Sprinkler Fitter

Trades Professions - Blasting and Fireworks

Select license

- Blaster Class 1
- Blaster Class 2
- Blaster Class 3
- Blaster Class 4
- Blaster Class 5
- Blaster Class 6
- Blaster Class 7
- Fireworks Manufacturer

Trades Professions - Conveyances

Select license

- Elevator Apprentice
- Elevator Apprentice – Restricted
- Elevator Contractor
- Elevator Helper
- Elevator Mechanic
- Elevator Mechanic – Restricted

- Lift Apprentice
- Lift Helper
- Lift Mechanic

Trades Professions - Dwellings, Structures and Sites

Select license

- Dwelling Contractor
- Dwelling Contractor – Restricted
- Dwelling Contractor Qualifier
- Manufactured Home Installer
- Manufactured Home Manufacturer
- Manufactured Home Salesperson
- Soil Tester
- Weld Test Conductor
- Welder

Trades Professions - Electrical

Select license

- Beginner Electrician
- Electrical Apprentice
- Electrical Contractor
- Industrial Electrical Apprentice
- Industrial Journeyman Electrician License
- Journeyman Electrician
- Master Electrician
- Residential Electrical Apprentice
- Residential Journeyman Electrician License
- Residential Master Electrician License

Trades Professions - Inspection

Select license

- Boiler/Pressure Vessel Inspector
- Commercial Building Inspector
- Commercial Electrical Inspector
- Commercial Plumbing Inspector
- Elevator Inspector
- POWTS Inspector
- Rental Weatherization Inspector
- Soil Erosion Inspector
- Tank System Inspector
- UDC Construction Inspector
- UDC Electrical Inspector
- UDC HVAC Inspector
- UDC Inspection Agency
- UDC Plumbing Inspector

Trades Professions - Mechanical

Select license

- HVAC Contractor
- HVAC Qualifier
- Liquefied Gas Supplier
- Liquefied Gas Supplier – Restricted
- Refrigerant Handling Technician

Trades Professions - Plumbing

Select license

- Cross Connection Control Tester
- Journeyman Plumber

- Journeyman Plumber Restricted Appliance
- Journeyman Plumber Restricted Service
- Master Plumber
- Master Plumber Restricted Appliance
- Master Plumber Restricted Service
- Pipelayer
- Plumbing Apprentice
- Plumbing Learner Restricted Appliance
- Plumbing Learner Restricted Service
- POWTS Maintainer
- Utility Contractor

The following questions were asked about each of the following agencies:
Department of Agriculture, Trade and Consumer Protection
Department of Safety and Professional Services
Department of Children and Families
Department of Financial Institutions
Department of Health Services
Office of the Commissioner of Insurance
Department of Natural Resources
Department of Revenue
Department of Workforce Development
Other Agencies

Respondents were only asked these questions about an agency if they identified the agency as one they interacted with to do business.

Answer only those questions that apply to you

How would you rate your overall experience with the agency?

- Very Poor
- Poor
- Average
- Good
- Very Good
- No opinion/unsure

How would you rate the licensing process?

- Very Poor
- Poor
- Average
- Good
- Very Good

No opinion/unsure

After submitting your application, what length of time did you wait for your license? Select no more than 1.

- 3 or less business days
- 4 - 7 business days
- 8 - 29 business days
- 30 days or longer

How satisfied are you with the time it takes to receive your license after you apply?

- Very dissatisfied
- Somewhat dissatisfied
- No opinion
- Somewhat satisfied
- Very satisfied

As a license holder, how do you stay up-to-date on changes in state law as it relates to your industry? Select no more than 1.

- Membership Association
- State Agency
- None of the above
- Other, please specify

How much value do you believe there is relative to fees paid to be a license holder?

- Good Value
- Some Value
- Not Sure
- Minimal Value
- No Value

How frequently, if at all, should you be required to renew your license? Select no more than 1.

- Leave as is
- Renew more frequently
- Renew less frequently
- Do not require renewal at all

What is your opinion of the continuing education (CE) requirements, if any, for your license? Select no more than 1.

- No CE is required now
- Ok as is
- Reduce the CE requirement

- Increase the CE requirement
- Do not require CE
- Additional comments on CE
- No opinion

Enter additional comments:

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How would you improve your experience

Page 22

How would you improve your experience with the licensing process

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Consolidation Input – All respondents were asked these questions

Do you believe there should be one agency responsible solely for Agriculture and food safety in Wisconsin? Select at least 1 and no more than 1.

- Definitely Yes
- Probably Yes
- Not Sure
- Probably No
- Definitely No

Do you believe there should be one agency responsible for all licensing and permitting in Wisconsin? Select at least 1 and no more than 1.

- Definitely Yes
- Probably Yes
- Not Sure
- Probably No
- Definitely No

If Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection were consolidated how do you think the focus of the new agency might change the current functions such as agriculture, food safety, consumer protection, building plan review and professional licensing?

- Reduce focus
- Stay the same
- Increase focus
- Unsure

How do you believe a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would affect the services to you as a license holder?

- Greatly reduce service
- Reduce service somewhat
- Not sure
- Improve service somewhat
- Greatly improve service

Do you believe that consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection will result in savings?

- Definitely Yes
- Probably Yes
- Not Sure
- Probably No
- Definitely No

If consolidation results in lower costs to the agency, how would you want the savings used?

- Return savings to taxpayers
- Use savings to reduce license fees
- Invest savings to provide better service

Other, please specify

If no savings were found from a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would you support the general concept of consolidation?

- Definitely Yes
- Probably Yes
- Not Sure
- Probably No
- Definitely No

Please use the space below to provide additional comments



Survey Distribution - Stakeholder Groups Contacted with Electronic Survey

The following is a list of the stakeholder groups contacted and asked to distribute via email to their membership by DATCP

| Number | Organization |
|--------|---|
| 1. | 211 (Badger Bay Management Co.) |
| 2. | ABS Global, Inc. |
| 3. | AgrAbility of Wisconsin |
| 4. | Alta Genetics |
| 5. | Babcock Institute |
| 6. | Bioforward |
| 7. | Bull Studs Emergency Management, Accelerated Genetics |
| 8. | Capitol Consultants, Inc. |
| 9. | Capitol Strategies |
| 10. | Center for Dairy Profitability |
| 11. | Center for Integrated Agricultural Systems (CIAS) |
| 12. | Chippewa County Economic Development Corporation |
| 13. | Concerned Auto Recyclers of WI |
| 14. | Cooperative Network Association |
| 15. | Dairy Business Assn |
| 16. | Dane County Farmers Market |
| 17. | Daybreak Foods |
| 18. | Department of Health |
| 19. | Department of Natural Resources |
| 20. | Department of Public Instruction |
| 21. | DeWitt, Ross & Stevens |
| 22. | Discover Mediaworks |
| 23. | Easter Seals Wisconsin |
| 24. | Equity Cooperative Livestock Sales Association |
| 25. | ExxonMobil Refining and Supply Company |
| 26. | FairShare CSA Coalition |
| 27. | Farley Center for Peace, Justice & Sustainability |
| 28. | Focus on energy |
| 29. | Fondy food Center |
| 30. | Food and Beverage Milwaukee |
| 31. | Food Export Association of the Midwest |
| 32. | Genex |
| 33. | Ginseng Board of Wisconsin |
| 34. | GLCI Steering Committee/NRCS |
| 35. | Gold'n Plump Poultry |

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| 36. | Gorst Valley Hops |
| 37. | GrassWorks |
| 38. | Great Lakes Farm to School Network |
| 39. | Green County Beef Producers |
| 40. | Growing Power |
| 41. | Growmark |
| 42. | Health First Wisconsin |
| 43. | Hmong Wisconsin Chamber of Commerce |
| 44. | Indianhead Food Service Distribution |
| 45. | Indianhead Polled Hereford Association |
| 46. | Indianhead Sheep Breeders Association |
| 47. | International Society of Weighing and Measuring |
| 48. | Jennie-O Turkey Store, Inc. |
| 49. | Kettle Moraine Mink Breeders |
| 50. | MacFarlane Pheasants, Inc. |
| 51. | Madison Area Community Supported Agriculture |
| 52. | Madison International Trade Association |
| 53. | Madison Region Economic Development Partnership |
| 54. | Marathon Petroleum |
| 55. | Master Meat Crafter Program |
| 56. | McKay Nursery |
| 57. | Michael Best & Friedrich LLP |
| 58. | Michael Fields Agriculture Institute |
| 59. | Midwest Food Processors Association |
| 60. | Midwest Grocers Association |
| 61. | Midwest Organic and Sustainable Education Service |
| 62. | Midwest Organic Services Association |
| 63. | Midwest Pickle Association |
| 64. | Midwest Pinzgauer Association |
| 65. | Milwaukee International Trade Association |
| 66. | New North, Inc. |
| 67. | NFO - Wisconsin |
| 68. | Organic Advisory Council |
| 69. | Organic Valley |
| 70. | Professional Dairy Producers of WI |
| 71. | REAP Food Group |
| 72. | Reindeer Owners & Breeders Association (R.O.B.A.) |
| 73. | SE Wisconsin Farm and Food Network |
| 74. | Sexing Technologies Inc. |
| 75. | Small Business Development Center - Milwaukee |
| 76. | Southwest Badger Resource Conservation & Development Council |

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| 77. | Spring Rose Growers Cooperative |
| 78. | Syngenta |
| 79. | The Welch Group |
| 80. | Transform WI |
| 81. | U.S. Commercial Service Midwest |
| 82. | U.S. Small Business Administration-Madison |
| 83. | USDA Rural Development |
| 84. | UW Cooperative Extension |
| 85. | UW Extension |
| 86. | UW Extension – Emergency Management |
| 87. | UW Madison - CALS |
| 88. | UW Madison - Center for Integrated Agricultural Systems |
| 89. | UW Madison -West Madison Ag. Research Station |
| 90. | UW River Falls |
| 91. | UW Superior |
| 92. | UW-Madison Animal Science Dept. |
| 93. | UW-Madison Food Science |
| 94. | UW-River Falls Animal Science Dept. |
| 95. | WAGA, WATA, WBGA, WFGV |
| 96. | Whitetails of Wisconsin (W.O.W.) |
| 97. | WI/MN Petroleum Council |
| 98. | Wisconsin Agribusiness Council |
| 99. | Wisconsin Agricultural Tourism Association |
| 100. | Wisconsin Agri-Service Assoc. |
| 101. | Wisconsin AgroSecurity Resource Network |
| 102. | Wisconsin Airport Management Association |
| 103. | Wisconsin Angus Association |
| 104. | Wisconsin Apple Growers Association |
| 105. | Wisconsin Aquaculture Association, Inc. |
| 106. | Wisconsin Association of Fairs |
| 107. | Wisconsin Association of FFA |
| 108. | Wisconsin Association of Meat Processors |
| 109. | Wisconsin Association of Professional Agricultural Consultants |
| 110. | Wisconsin Automobile & Truck Dealers Association Inc. |
| 111. | Wisconsin Automotive Aftermarket Association |
| 112. | Wisconsin Bakers Association Inc. |
| 113. | Wisconsin Beef Council |
| 114. | Wisconsin Berry Growers Association |
| 115. | Wisconsin Cattlemen’s Assn |
| 116. | Wisconsin Cattlemen's Association |
| 117. | Wisconsin Center for Dairy Research |

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| 118. | Wisconsin Cheese Makers Assn |
| 119. | Wisconsin Cherry Board |
| 120. | Wisconsin Cherry Growers Inc. |
| 121. | Wisconsin Christmas Tree Producers Association |
| 122. | Wisconsin Commercial Deer & Elk Farmers Association |
| 123. | Wisconsin Commercial Flower Growers Association |
| 124. | Wisconsin Corn Growers Assn |
| 125. | Wisconsin Corn Promotion Board |
| 126. | Wisconsin Cranberry Board |
| 127. | Wisconsin Cranberry Growers Association |
| 128. | Wisconsin Dairy Artisan Network |
| 129. | Wisconsin Dairy Products Association |
| 130. | Wisconsin Economic Development Corporation |
| 131. | Wisconsin Emu Association |
| 132. | Wisconsin Farm Bureau Federation |
| 133. | Wisconsin Farm Service Agency |
| 134. | Wisconsin Farmers Union |
| 135. | Wisconsin Fire Chief's Association |
| 136. | Wisconsin Fire Inspectors Association |
| 137. | Wisconsin Food Hub Cooperative |
| 138. | Wisconsin Foodie |
| 139. | Wisconsin Fresh Market Vegetable Growers Association |
| 140. | Wisconsin Grape Growers Association |
| 141. | Wisconsin Grass-fed Beef Cooperative |
| 142. | Wisconsin Green Industry Federation |
| 143. | Wisconsin Grocers Association |
| 144. | Wisconsin Hereford Association |
| 145. | Wisconsin Holstein Association |
| 146. | Wisconsin Honey Producers Association |
| 147. | Wisconsin Horse Council |
| 148. | Wisconsin Innovation Kitchen |
| 149. | Wisconsin Insurance Alliance |
| 150. | Wisconsin Jersey Breeders Association |
| 151. | Wisconsin Jewelers Association |
| 152. | Wisconsin Livestock and Meat Council |
| 153. | Wisconsin Livestock Breeders Association |
| 154. | Wisconsin Local Food Network |
| 155. | Wisconsin Manufacturing Extension Partnership |
| 156. | Wisconsin Maple Syrup Producers Association |
| 157. | Wisconsin Marina Association |
| 158. | Wisconsin Milk Marketing Board, Inc. |

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| 159. | Wisconsin Mint Board |
| 160. | Wisconsin Nursery Growers Association |
| 161. | Wisconsin Obesity Prevention Network |
| 162. | Wisconsin Office of Rural Health |
| 163. | Wisconsin Paper Council |
| 164. | Wisconsin Petroleum Council (WPC) |
| 165. | Wisconsin Petroleum Equipment Association |
| 166. | Wisconsin Petroleum Equipment Contractors Association (WisPEC) |
| 167. | Wisconsin Petroleum Marketers and Convenience Store Association |
| 168. | Wisconsin Pork Association |
| 169. | Wisconsin Potato and Vegetable Growers Association |
| 170. | Wisconsin Potato Board |
| 171. | Wisconsin Potato Industry Board |
| 172. | Wisconsin Poultry & Egg Improvement Assn |
| 173. | Wisconsin Propane Gas Association |
| 174. | Wisconsin Red and White Cattle Association |
| 175. | Wisconsin Restaurant Association |
| 176. | Wisconsin Rural Partners |
| 177. | Wisconsin Rural Women's Initiative |
| 178. | Wisconsin Self-Service Laundry Association |
| 179. | Wisconsin Sheep Breeders Cooperative |
| 180. | Wisconsin Sheep Dairy Cooperative |
| 181. | Wisconsin Shorthorn Association |
| 182. | Wisconsin Show Pig Association |
| 183. | Wisconsin Simmental Association |
| 184. | Wisconsin Sod Producers Association |
| 185. | Wisconsin Soybean Association |
| 186. | Wisconsin Soybean Board |
| 187. | Wisconsin Specialty Cheese Institute |
| 187. | Wisconsin Specialty Cheese Institute |
| 188. | Wisconsin State Cranberry Growers Association |
| 189. | Wisconsin Transportation Builders Association |
| 190. | Wisconsin Utilities Association |
| 191. | Wisconsin Veterinary Medical Assoc. |
| 192. | Wisconsin Veterinary Medical Association |
| 193. | Wisconsin Winery Association |
| 194. | World Beef Expo |
| 195. | World Trade Center Wisconsin |
| 196. | WTCS Ag Education |

DSPS Groups

The following is a list of the stakeholder groups contacted and asked to distribute via email to their membership by DSPS.

| Number | Organization |
|--------|--|
| 1. | American Massage Therapy Association, WI Chapter |
| 2. | Chiropractic Society of Wisconsin |
| 3. | Funeral Service and Cremation Alliance of Wisconsin |
| 4. | International Union of Operating Engineers Local #139 |
| 5. | Iron Workers District Council of the North Central States |
| 6. | Lake State Lumber Association |
| 7. | Leading Age Wisconsin |
| 8. | League of Wisconsin Municipalities |
| 9. | Madison Area Builders Association |
| 10. | Mechanical Contractors Association of Wisconsin |
| 11. | Medical College of Wisconsin |
| 12. | Mental Health America of Wisconsin |
| 13. | Miron Construction |
| 14. | National Association of Chain Drug Stores |
| 15. | National Association of Social Workers – WI Chapter |
| 16. | National Electrical Manufacturers Association |
| 17. | Novartis Pharmaceuticals Corporation |
| 18. | Otsuka America Pharmaceutical, Inc. |
| 19. | Pharmaceutical Research and Manufacturers of America (PhRMA) |
| 20. | Pharmacy Society of Wisconsin |
| 21. | Reckitt Benckiser Pharmaceuticals Inc |
| 22. | Southeast Dental Associates |
| 23. | Sunovion Pharmaceuticals, Inc |
| 24. | Takeda Pharmaceuticals America |
| 25. | VJS Construction Services |
| 26. | Wal-Mart |
| 27. | Wisconsin Academy of Ophthalmology |
| 28. | Wisconsin Academy of Physician Assistants |
| 29. | Wisconsin Alliance of Hearing Professionals |
| 30. | Wisconsin Amusement and Music Operators |
| 31. | Wisconsin Association for Marriage and Family Therapy |
| 32. | Wisconsin Association of Nurse Anesthetists |
| 33. | Wisconsin Association of School Nurses |
| 34. | Wisconsin Athletic Trainers Association, Inc. |
| 35. | Wisconsin Builders Association |

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| 36. | Wisconsin Business Alliance |
| 37. | Wisconsin Chapter of the American Academy of Pediatrics |
| 38. | Wisconsin Chapter of the American College of Emergency Physicians, Inc. |
| 39. | Wisconsin Chiropractic Association |
| 40. | Wisconsin Dental Association |
| 41. | Wisconsin Dental Hygienists Association |

2014

State of Wisconsin,
Department of
Administration

Tyler Byrnes
Nancy Mistele
Joe Knilans

STUDY ON CONSOLIDATION OF THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION WITH THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

Study presented to the Legislature to meet requirements of 2013 Wisconsin Act 20, Section 9101(3s).

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Executive Summary

The Department of Administration has prepared a report on the potential consolidation of the Department of Agriculture, Trade and Consumer Protection with the Department of Safety and Professional Services, in response to requirements of 2013 Wisconsin Act 20, Section 9101(3s). The 2013-15 biennial budget required the Department of Administration to conduct a study to determine the appropriateness of combining the functions currently performed by the Department of Agriculture, Trade and Consumer Protection with services provided by the Department of Safety and Professional Services. The legislation required the study to consult with the impacted agencies, the boards and councils attached to or under those agencies, and members of the public who may be affected by the consolidation of the two agencies

Outreach

- The study was completed in consultation with affected customers via an electronic survey, with more than 24,000 responses. See the Survey Methodology and Results document for complete results and methodology, as well as Appendices 3, 4 and 5 for survey questions, results and demographics.
- Impacted agencies were consulted directly via meetings with agency leadership and administrative staff.
- Stakeholder group representatives were engaged via direct meetings and direct contacts in the form of letters sent to leadership at the Department of Administration.

Conclusions and Recommendations

- **Do Not Consolidate Agencies:** Due to limited overlap between agency customers, customer sentiment against a merger, potential administrative difficulties presented by the potential merger and limited potential for savings, the agencies should not be merged. A merger could risk losing the generally high performance ratings of both agencies, most notably the 65.8 percent of respondents that rated their interactions with the Department of Safety and Professional Services as "Good" or "Very Good".
- **Move the Veterinary Examining Board to the Department of Agriculture, Trade and Consumer Protection:** Due to the historical relationship between the Veterinary Board and the department, as well as the close relationship with the veterinary profession, the Veterinary Examining Board should be transferred.
- **Improve Board Staffing and Examine Board Powers:** In response to feedback from impacted stakeholder groups, the study recommends improvements to board staffing, training and document management. The Department of Safety and Professional Services began making changes to improve these areas in 2012, which may have not yet been reflected in stakeholder sentiment. Additionally, the study recommends that the powers and duties of existing examining and advisory boards should be examined, to standardize board

practices, meeting schedules, actions on potential licenses and other issues. The study also recommends an examination of the overall practice of state licensure of professions.

- **Licensing Fees Charged by the Department of Safety and Professional Services should be Reexamined:** Most fees charged by the department are set administratively via a fee study, reviewed by the Joint Committee on Finance. These fees should be reexamined through the existing fee study process, with current budget assumptions.
- **Continue Agency Improvements on Document Management, Electronic Licensure and Electronic Communications:** The two departments have projects underway to improve document management, electronic licensing and customer communications. These projects should be continued, in close consultation with each other, other state agencies and the private sector.
- **The Department of Safety and Professional Services is a vital Point of Contact between the state and the public:** Over 380,000 individuals are licensed by the department in order to work in their chosen professions. Additionally, the department reviews the plans of most commercial buildings constructed in the state. This makes the agency one of the primary points of contact for state citizens. Efforts should be made to improve the customer service experience with the agency through additional LEAN Government/Six Sigma initiatives.

Part I: Background Information

Department of Safety and Professional Services

The Department of Safety and Professional Services (DSPS) serves as the state's primary entity for licensure of professionals, with over 388,000 active credential holders. Licenses issued by the agency are generally issued to individual professionals in a specific occupation. Professions are either regulated and licensed through an examining board or directly by the department, depending on the applicable governing statute for a specific license. In addition to the examining boards, there are also a large number of advisory boards attached to the agency. Advisory boards have less authority over the licensing requirements and regulation of various professions. These boards must be consulted when changes to regulations are made, but do not have final authority over changes.

The agency is also responsible for ensuring competent practice of licensed professionals, the safety of the construction and use of public and private buildings, and compliance with professional and industry standards.

Division of Policy Development

The Division of Policy Development provides administrative support and policy guidance to the professional boards by facilitating board meetings and serving as a liaison between the boards and the department. The division manages the administrative rule promulgation process for both professions regulated by examining boards and professions directly regulated by the agency. In addition, the division is responsible for managing continuing education and examination requirements for regulated professions.

Division of Legal Services and Compliance

The Division of Legal Services and Compliance provides legal services to professional boards regarding the investigation and discipline of licensed credential holders for violations of professional regulations. The division is also responsible for the complaint intake process, compliance monitoring, and a confidential program for impaired professionals. In addition, the division conducts business compliance inspections and financial audits.

Division of Industry Services

Within the Division of Industry Services, the Bureau of Field Services provides services related to the inspections, construction and operation of buildings, along with ensuring compliance with health and safety codes. The Bureau of Technical Services provides services such as plan review, consultation and product evaluation. The Bureau of Administrative Services provides administrative support to the division.

Division of Management Services

The Division of Management Services provides administrative services to the Office of the Secretary and all other divisions within the department. These services include human resources, payroll, planning, budget, accounting and information technology.

Division of Professional Credential Processing

The Division of Professional Credential Processing is responsible for all credential application processing, including determination of credential eligibility and credential renewal.

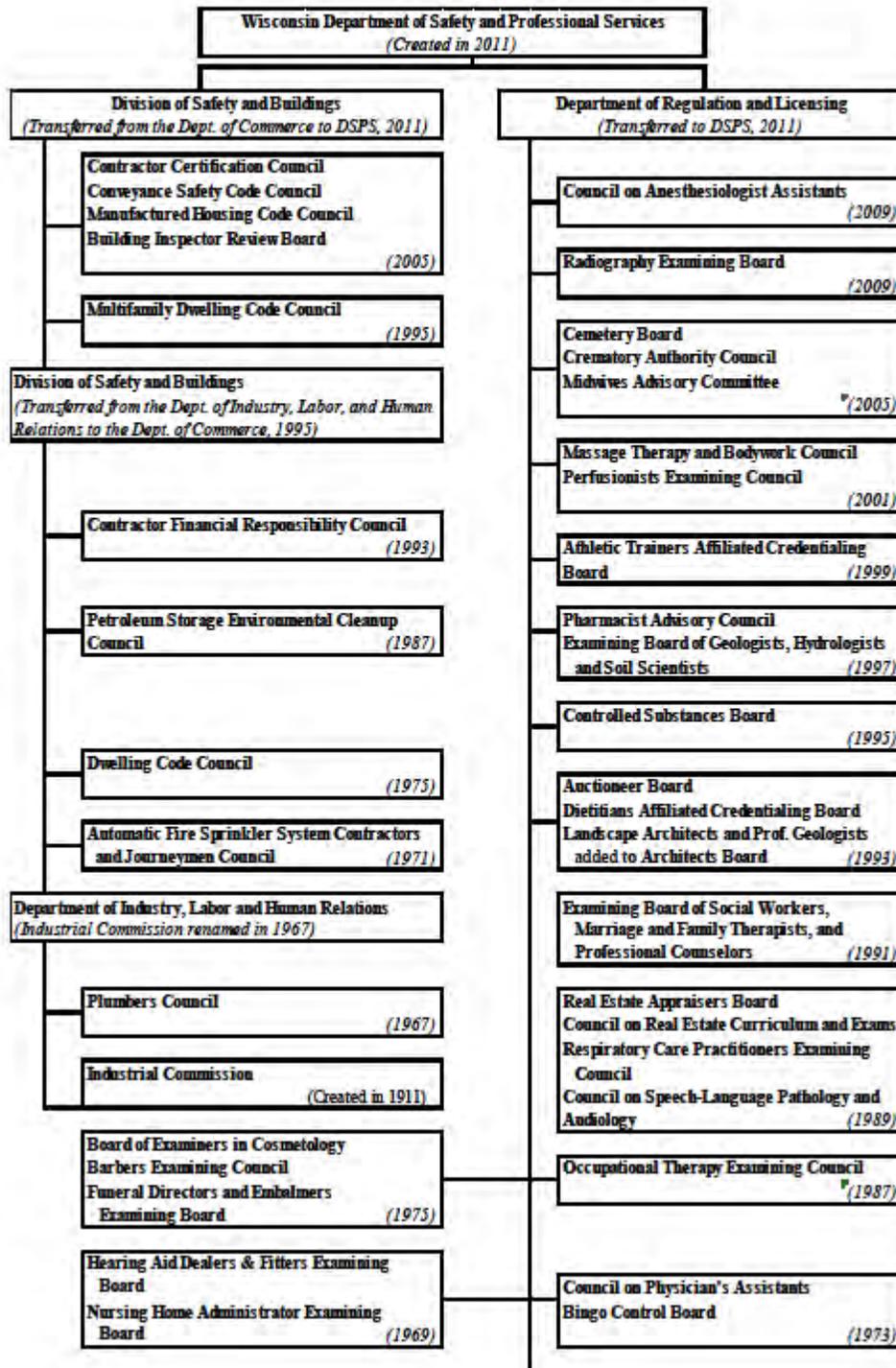
Agency History

Occupational licensing had previously been the responsibility of the Department of Regulation and Licensing (DRL), which is now DSPS. DSPS was created by combining several existing regulatory boards and commissions under one agency as a part of the broad reorganization of state government in the mid-1960s. Prior to the creation of DRL, professional occupations were regulated by independent examining boards that had the authority to regulate the professions, grant credentials and collect fees. Each of these independent boards had a separate budget and directly employed staff. The first such board was the Pharmacy Examining Board, created in 1882 with 16 additional independent examining boards or councils created through 1965. DRL existed, with additional responsibilities added over time, until 2011.

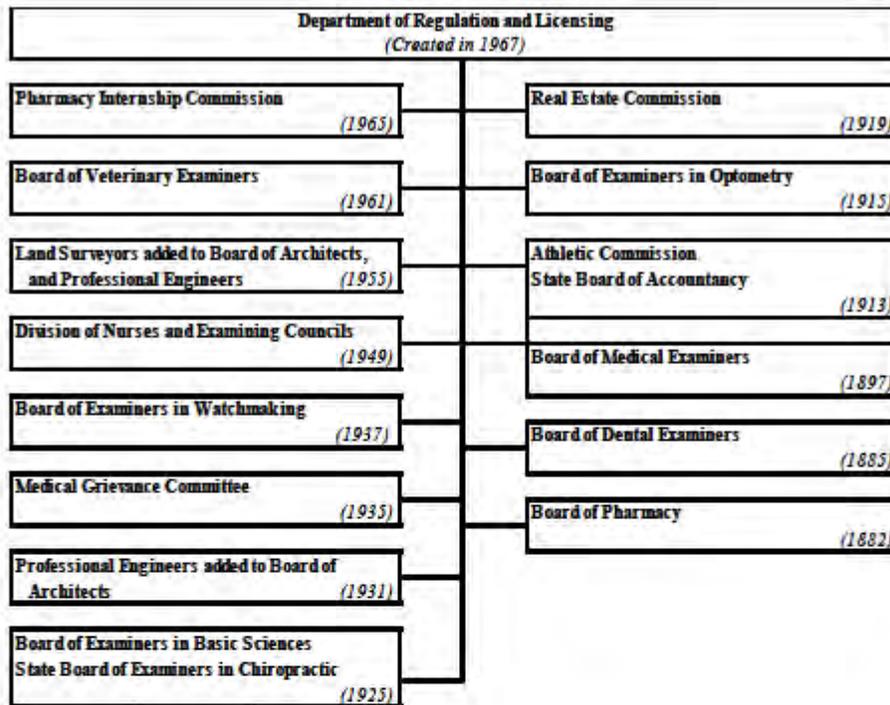
The 2011-13 biennial budget, 2011 Wisconsin Act 32, created the Department of Safety and Professional Services. DSPS was responsible for all the functions of DRL, as well as additional responsibilities related to environmental regulatory services, and safety and buildings, which were transferred from the Department of Commerce. As part of the 2013-15 biennial budget, the majority of functions related to environmental regulatory services were transferred to the Department of Natural Resources (DNR) and to DATCP, as noted below.

DSPS is almost entirely funded by licensing fees and plan review fees. Most of these fees are set administratively via a fee study, subject to review by the Joint Committee on Finance. The fees are intended to be set at rates that allow the department to function. In past fiscal years, due to statewide tax revenue constraints, state agencies, including DSPS, have been required to lapse a portion of their funding to the general fund in order for the fund to maintain a positive fund balance. Item 1 shows the history of the department:

Item 1: DSPS History



Item 1: DSPS History - Continued



Relevant Budget Changes

The 2013-15 biennial budget act made significant changes to DSPS responsibilities, by transferring functions to DNR and DATCP. This section details those changes.

The department had shared responsibility with DNR for administration of the Petroleum Environmental Cleanup Fund Award (PECFA) program and the abandoned tank removal program. PECFA reimburses owners for a portion of the costs incurred for remediation of contamination from leaking petroleum product storage tank systems and home heating oil systems.

DSPS was responsible for the financial reimbursement portion of the program, including review and payment of claims, and for administration of cleanup at low- and medium-risk petroleum sites. These responsibilities, along with associated funding and staff were transferred to DNR. Management of the petroleum inspection segregated fund, which is funded through a 2 cent per gallon tax on motor fuel, was also transferred to DNR. The functions were transferred to DNR because these functions were already partially covered by that agency and combining the split functions provided operational efficiencies. A net total of 3.0 FTE positions and \$485,700 was eliminated as a result of the transfer of responsibilities.

The department was also responsible for inspection and regulation of petroleum, and underground petroleum storage tanks. This includes private heating oil tanks as well

as tanks at retail gas stations. Responsibilities, funding, rule-making authority and staff were transferred from DSPS to DATCP. This change also created efficiencies because DATCP already performed inspections at retail gas stations, as part of its regulation of weights and measures. Before the transfer, both agencies conducted inspections at gas stations. By combining the two functions, time was saved on the part of both the state and the regulated gas stations. A net total of 6.5 FTE positions and \$405,700 was saved due to this transfer.

The following table shows the department's budget and total full-time equivalent positions (FTE) for the current and previous biennium.

Table 1: DSPS Budget

| Budget Fiscal Year | | | | | | |
|---------------------------|---------------------|---------------------|--------------|---------------------|---------------------|--------------|
| | 2011-13 Biennium | | | 2013-15 Biennium | | |
| Fund Source | 2012 | 2013 | FTE | 2014 | 2015 | FTE |
| Program Revenue | \$66,004,400 | \$66,254,400 | 302.3 | \$48,506,300 | \$48,774,400 | 261.6 |
| GPR | 2,413,200 | 2,413,200 | 1.0 | 2,412,300 | 2,412,300 | 1.0 |
| Segregated Revenue | 13,467,900 | 13,467,900 | 66.3 | - | - | - |
| Total | \$81,885,500 | \$82,135,500 | 369.6 | \$50,918,600 | \$51,186,700 | 262.6 |

Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) works to assure a safe and secure food supply, healthy animals and plants; provide consumer protection; and ensure fair business practices. The department also works with partners in agriculture and business to ensure a vibrant agricultural sector and a clean environment.

The DATCP is a regulatory agency with jurisdiction over nearly all types of business, via consumer protection laws. The department has authority to adopt administrative rules that have the force of law. As a regulatory agency, the department seeks voluntary solutions, but it can use its enforcement authority when necessary. Statutes and administrative rules give DATCP the authority to conduct hearings and investigations, adopt rules, perform inspections, issue subpoenas, collect and analyze samples, issue compliance orders, and suspend or revoke licenses. In cooperation with a district attorney or the Department of Justice, DATCP may also prosecute law violations in court.

In addition to regulatory action, the department also provides services to consumers and businesses, and licenses over 100,000 individuals and businesses. Generally, DATCP licenses businesses more frequently than individuals.

Division of Food Safety

The Food Safety Division works to assure a safe, wholesome and secure food supply. The division enforces Wisconsin's food safety and labeling laws, licenses and inspects over 30,000 food establishments, and supervises local government inspection of others. Supermarkets fall under the jurisdiction of DATCP, while restaurants are inspected by the Department of Health Services. Both are inspected under the same regulatory regime.

The Food Safety Division regulates the entire food chain, from the agricultural producer to the consumer. That permits a comprehensive approach to food safety issues affecting producers, processors, distributors, retailers and consumers

Division of Trade and Consumer Protection

The Trade and Consumer Protection Division enforces consumer protection laws and rules, including jurisdiction over false sales or advertising claims and unfair business practices.

The division also enforces state weights and measures laws to ensure that consumers receive the advertised amount of the product they are purchasing. In doing so, the division tests commercial scales, gasoline pumps, price scanners and measuring devices, and enforces fair packaging and labeling requirements. According to national estimates, weights and measures enforcement saves the average family \$600 per year.

Division of Animal Health

The Division of Animal Health is responsible for ensuring all livestock in the state meet state and federal health standards. This ensures human safety, as well as animal

safety, because serious animal diseases may impact humans. Additionally, the division licenses various livestock businesses such as animal markets, animal dealers, animal trucker's licenses, and dog shelters and breeders.

Division of Agricultural Resource Management

The Agricultural Resource Management Division works to ensure good stewardship and responsible use of Wisconsin's land, water and plant resources. The division is responsible for safeguarding the resources that support the food chain, in part by regulating pesticides and other agrichemicals to protect public health and the environment. When spills occur, the division works to clean up agrichemical spills. The division also provides the following services:

- Helps landowners and local governments conserve Wisconsin's productive land and water resources;
- Establishes standards for facility siting ordinances and helps preserve farmland threatened by unplanned development and sprawl;
- Helps prevent pollution of surface water; and
- Works to control serious pests that threaten Wisconsin crops, forests and plant communities.

Division of Agricultural Development

The Agricultural Development Division is responsible for fostering a vibrant Wisconsin agricultural economy, by supporting farmers and agricultural businesses in the state. This division is responsible for promoting value-added development and diversification of the agricultural sector, promoting local sale and consumption of Wisconsin products, and connecting Wisconsin products with export opportunities.

Relevant Budget Changes

The 2013-15 biennial budget transferred the Tank and Petroleum Testing Program from DSPS to DATCP. This included the transfer of 36.0 FTE positions as well as associated funding, rule-making and enforcement authority. The budget made other less significant changes to the agency as well, but this item is the largest change in agency responsibilities and staffing.

The following table shows the department's budget and total FTE positions for the current and previous biennium.

Table 2: DATCP Budget

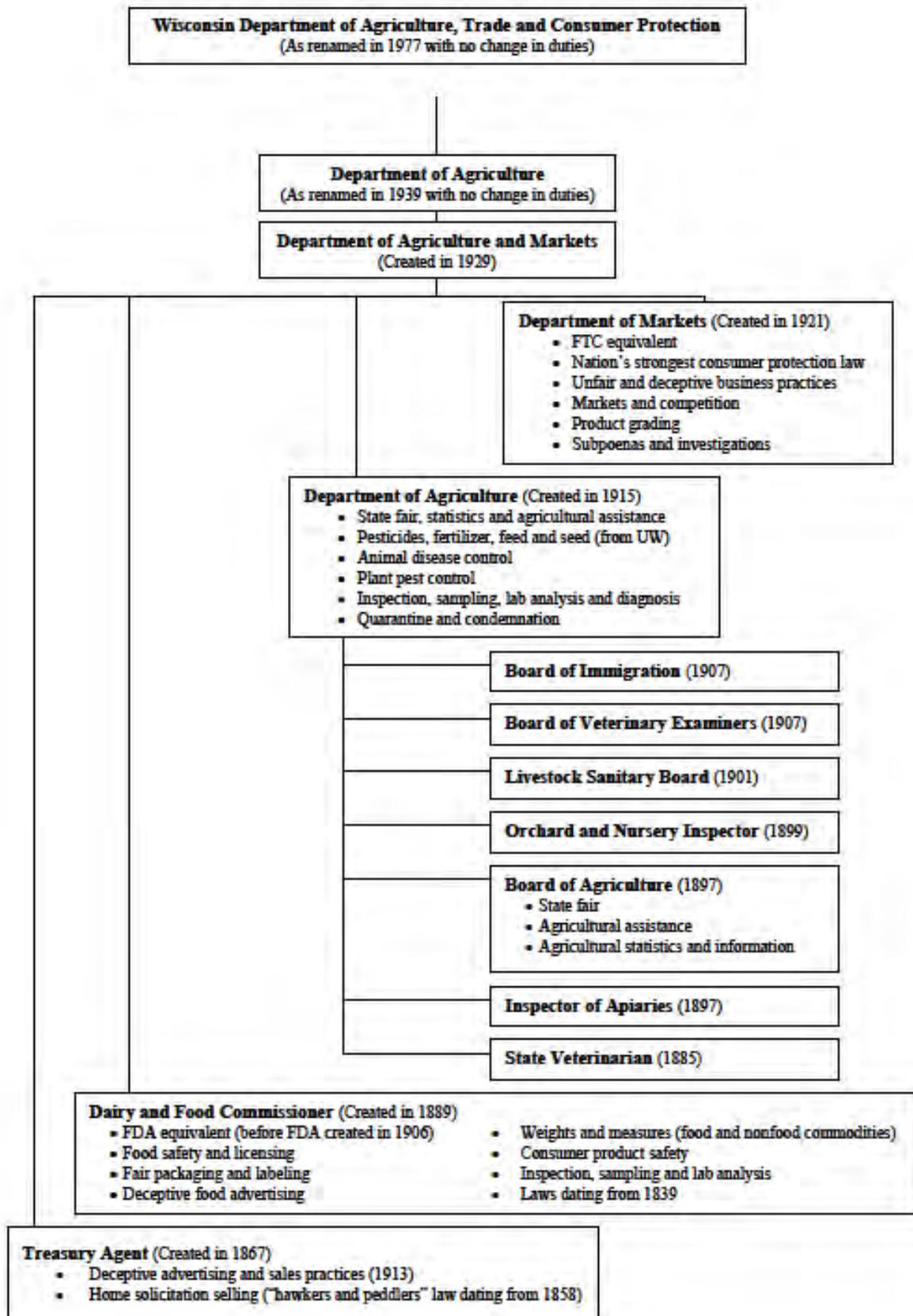
| Budget Fiscal Year | | | | | | |
|---------------------------|----------------------|----------------------|--------------|---------------------|---------------------|--------------|
| | 2011-13 Biennium | | | 2013-15 Biennium | | |
| Fund Source | 2012 | 2013 | FTE | 2014 | 2015 | FTE |
| Program Revenue | \$44,213,800 | \$44,389,200 | 283.6 | \$37,103,100 | \$37,048,700 | 283.6 |
| GPR | 26,612,300 | 28,375,900 | 210.0 | 26,878,900 | 26,488,800 | 211.0 |
| Segregated Revenue | 29,922,000 | 30,352,700 | 97.3 | 33,385,500 | 32,527,700 | 131.3 |
| Total | \$100,748,100 | \$103,117,800 | 590.6 | \$97,367,500 | \$96,065,200 | 625.9 |

Department History

The department formed in 1929 the direct descendent of the Department of Agriculture and Markets, formed in 1929 by combining the Department of Markets, the Department of Agriculture, the Treasury Agent and the Dairy and Food Commissioner. The agency has changed names twice since its inception, once to the Department of Agriculture in 1939 and again in 1977 to the current Department of Agriculture, Trade and Consumer Protection. However, the primary functions of the agency have not been modified with the name changes.

The agency has roots in laws that date before Wisconsin statehood and have strong ties to the state's agricultural history. The oldest of the laws were the initial consumer protection laws designed to ensure that agricultural products were of the advertised quality and quantity. These laws were enforced by the Treasury Agency. Food safety was also an early addition to the state's responsibilities, as the public demanded assurance that food was safe to eat. Early food safety laws were under the purview of the Dairy and Food Commissioner, created in 1889. The original Department of Agriculture was formed in 1915 from a combination of various boards with jurisdiction over agricultural products, animals and immigration. The following item shows the lineage of the agency:

Item 2: DATCP History



Part II: Public Involvement, Stakeholder Outreach and Agency Consultation

Survey Distribution and Methods

As a portion of the study, the Legislature required consultation with board members, stakeholders and the general public on issues related to consolidating the two departments. In an effort to efficiently and cost-effectively contact the largest number of stakeholders, an electronic survey was used. This survey was sent to impacted board members, stakeholder groups and individual license holders and was publicized via media outlets to attract a broad spectrum of public comment. More than 430,000 people were directly contacted with the survey.

The contact lists were generated by using an email list of DSPS license holders, email lists generated from the Office of Business Development interactions with Chambers of Commerce and economic development groups as well as business contacts throughout the state. The survey was also electronically distributed through over 350 DATCP- and DSPS- identified stakeholder groups with directions to forward the survey to group members.

Links to the on-line survey were sent to email addresses for all the license holders on file with DSPS, which totaled 428,954 emails. In addition to agency contacts, the survey was also distributed to members of the DATCP and DSPS attached boards, members of the Legislature, and via the Department of Administration Office of Business Development at various events and through Chambers of Commerce. The survey was also available to the general public via a Web site and was publicized through media outlets. Please see Appendix 2 for a copy of the email sent with the survey.

The survey itself was crafted by Department of Administration Staff, in consultation with policy analysts and reviewed by DSPS and DATCP. These questions and potential answers were then reviewed by survey experts within state government to ensure that the questions did not lead the respondents to a preferred response. Please see Appendix 3 for a copy of all survey questions as they were presented to survey respondents.

Survey respondents were asked basic demographic questions, and then asked about which state agencies they interacted with. The structure of the survey varied based on which agencies were listed. Respondents were then asked to rate various aspects of agency performance for the agencies they selected. If the respondents rated agency performance as poor or very poor, they were provided space to provide additional comments on the survey. After completing this section, all respondents were asked questions directly related to their opinions of a potential merger. At the end of the survey respondents were able to provide general open-ended responses.

Respondent Characteristics and Survey Highlights

The next section provides highlights and analysis of the survey results. For full results please see the Survey Methodology and Results document. The following table shows the total response by type of survey contact.

Table 3: Respondents by Source of Contact

| Respondents by Source of Survey Contact | | |
|--|--------------------|-------------------------|
| Source of Contact | Respondents | Percent of Total |
| License Holders | 23,438 | 93.9% |
| Office of Business Development Contacts | 550 | 2.0% |
| DSPS Stakeholders | 336 | 1.3% |
| Legislature | 173 | 0.7% |
| Board and Councils | 147 | 0.6% |
| DOA/Wisconsin Web site | 128 | 0.5% |
| Other | 177 | 0.2% |
| Grand Total | 24,949 | 100.0% |

As the table demonstrates, most of the respondents were professional license holders, although as seen below, DSPS stakeholders had the highest response rate. There were also significant responses from individuals that were directly contacted by the Office of Business Development and stakeholder groups contacted by DATCP. The following table shows respondents by the means of contact. See Appendix 6 for a complete list of stakeholder groups contacted.

Table 4: Respondents by Source of Contact

| Respondents by Source of Survey Contact | | | |
|--|----------------------------|--------------------|----------------------|
| Source of Contact | Surveys Distributed | Respondents | Response Rate |
| License Holders | 429,305 | 23,438 | 5.5% |
| Office of Business Development Contacts | 1,596 | 550 | 34.5% |
| Other – Known Number Surveys Sent | 3,214 | 463 | 14.4% |
| Other – Unknown Number of Possible Respondents | N/A | 498 | N/A |

The following table shows the breakdown of respondents by their professions based on DSPS licensee categories, as self-identified by the respondents. Health professions are the best represented group and include doctors, nurses, pharmacists, dentists, dental hygienists, as well as social workers and other therapists. The next largest group did not identify a profession; however the majority of these respondents were also license holders. Some respondents identified combinations of multiple professions.

Table 5: Respondents by Profession

| Respondents by Profession | | |
|--|--------------------|-------------------------|
| Profession | Respondents | Percent of Total |
| Health Professions | 9,838 | 39.4% |
| No Response | 7,451 | 29.9% |
| Business Professions | 5,194 | 20.8% |
| Trades Professions | 1,920 | 7.7% |
| Manufactured Housing | 21 | 0.1% |
| Mixed Martial Arts/Boxing | 14 | 0.1% |
| <i>Subtotal</i> | 24,438 | 98.0% |
| Multiple Professions Identified/Multiple License Holder | | |
| Business Professions; Trades Professions | 210 | 0.8% |
| Health Professions; Business Professions | 187 | 0.7% |
| Health Professions; Trades Professions | 61 | 0.2% |
| Health Professions; Business Professions; Trades | 28 | 0.1% |
| <i>Subtotal</i> | 511 | 2.1% |
| Grand Total | 24,949 | 100.0% |

Please see Appendix 4 for full demographic information of the respondents.

Responses to the survey provided insight into three primary questions related to the appropriateness of the potential merger of the two agencies:

- How often are individuals customers of the Department of Safety and Professional Services, and the Department of Agriculture, Trade and Consumer Protection?
- Do agency customers see a need for a merger?
- Can a merger be recommended on the basis of poor performance on the part of either agency?

The following sections provide detail on how these questions are answered, based on responses to the survey.

Agency Contact Overlap

If large numbers of agency customers deal with both agencies, there would be a significant reason to combine the two. A merger would reduce the number of agencies contacted by an individual or business owner, potentially saving time and effort spent contacting multiple agencies.

Frequent contact with both agencies by customers would also indicate that the potential for agency operational efficiencies by combining the two agencies exists, by allowing the same staff to perform more than one function. For example, prior to the 2013-15 biennial budget request, the agencies determined that both DSPPS and DATCP were sending inspectors to gas stations to inspect fuel quality and to ensure the

accuracy of fuel pumps. Combining these functions at DATCP allowed inspections to occupy less of a business's time and allowed for efficiencies for the state. The following table shows the number of respondents that listed both DSPS and DATCP as agencies they contact in the course of doing business.

Table 6: Agency Overlap

| To do business in Wisconsin, I have contact with the following agencies: | Respondents | Percent of Respondents |
|---|--------------------|-------------------------------|
| Contact both DSPS and DATCP to do business | 830 | 3.3% |
| Contacts with DSPS, DATCP and other agencies to do business | 613 | 2.5% |
| <i>Total</i> | <i>1,443</i> | <i>5.8%</i> |
| Total Respondents | 24,949 | 100.0% |

Only 5.8 percent of respondents indicated that they did business with both DSPS and DATCP, with 2.5 percent of those respondents listing at least one additional agency. This indicates that there is limited overlap between customer bases for the two agencies. Additionally, there was limited overlap between either agency or any other agencies in state government. The most frequently mentioned additional agency, linked with DSPS was the Department of Health Services, followed by the Department of Natural Resources. The most frequently mentioned combination of agencies with DATCP was the Department of Natural Resources. See Appendix 5 for tables detailing full results.

Other agencies were frequently mentioned, but in unique combinations or combinations that corresponded with few other respondents. The most frequently mentioned agency was the Department of Health Services, followed by the Department of Revenue and the Department of Natural Resources. The following table shows how frequently other departments were mentioned by survey respondents.

Table 7: Departments Listed – Other than DATCP or DSPS

| Department | Responses |
|---|------------------|
| Health Services | 1,344 |
| Revenue | 1,236 |
| Natural Resources | 1,115 |
| Workforce Development | 1,015 |
| Financial Institutions | 770 |
| Other | 548 |
| Children and Families | 432 |
| Office of the Commissioner of Insurance | 390 |
| Public Instruction | 331 |

Given the limited overlap between customers of both agencies, it is unlikely that there would be significant savings of time and effort on the part of the public if the agencies were combined. Additionally, these results indicate that there are likely limited operational efficiencies to be gained from combining the two agencies. These conclusions are corroborated by consultation with department staff, which indicated limited overlap among agency functions.

Respondent Views on a Potential Merger

The second question addressed by the survey relates to how directly impacted stakeholders viewed the possibility of merging the two agencies. Though licensees and board members may not have a strong sense of internal agency operations, they are among the best gauges of the amount of focus they receive from an agency. By asking them directly their opinions of a merger, the respondents indicate whether a new, combined agency would serve their interests.

Generally, survey respondents were opposed to a potential merger. Of those that provided a response to the question "If no savings were found from a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would you support the general concept of consolidation?" only 15.7% of respondents responded "Probably Yes" or "Definitely Yes." The following table shows the responses to the question, excluding 4,375 blank responses.

Table 8: Consolidation Responses

| If no savings were found from a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would you support the general concept of consolidation? | | |
|---|---------------|----------------|
| Excludes respondents that did not respond to the question | | |
| Definitely Yes | 873 | 4.2% |
| Probably Yes | 2,364 | 11.5% |
| Not Sure | 3,532 | 17.2% |
| Probably No | 6,614 | 32.2% |
| Definitely No | 7,191 | 35.0% |
| Total Respondents | 20,574 | 100.00% |

By stating that the respondents should decide if the agencies should be combined, absent of savings, the survey question gives a sense of whether agency customers feel they would see better service or have an easier time receiving the services they need from an agency if DSPPS and DATCP were combined. Another question looked directly at service expectations in the event of a merger. The following table shows responses to the question "How do you believe a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would affect the services to you as a license holder?" This table excludes 4,430 blank responses.

Table 9: Evaluation of Services

| How do you believe a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would affect the services to you as a license holder? | | |
|--|---------------|---------------|
| Excludes respondents that did not respond to the question | | |
| Greatly improve service | 192 | 0.9% |
| Improve service somewhat | 760 | 3.7% |
| Not sure | 8,308 | 40.5% |
| Reduce service somewhat | 6,270 | 30.6% |
| Greatly reduce service | 4,989 | 24.3% |
| Total Respondents | 20,519 | 100.0% |

Only 4.6 percent of respondents felt that merging the two agencies would improve services. This again indicates that the most directly impacted customers of the agencies do not see a potential for improved services between the two agencies.

The following table shows respondent concern that a combined agency would lose focus on the individual functions of the two predecessor agencies. This concern was echoed in stakeholder contacts and discussions with agency staff. Specifically, the agricultural industry expressed concern that a merger would move focus from agriculture issues.

Table 10: Agency Focus

| If Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection were consolidated how do you think the focus of the new agency might change the current functions such as agriculture, food safety, consumer protection, building plan review and professional licensing? | | |
|---|---------------|-------------|
| Excludes surveys that did not respond to the question | | |
| Increase focus | 749 | 3.6% |
| Stay the same | 2,981 | 14.5% |
| Reduce focus | 12,487 | 60.7% |
| Unsure | 4,364 | 21.2% |
| Total Respondents | 20,581 | 100% |

Respondents were also given the opportunity to make additional comments at the end of the survey. These open-ended responses tended to relate to opinions about the potential for a merger, given the order in which the questions were asked. There were a total of 3,886 comments given in this space. These comments were categorized into seven categories.

Table 11: Comment Categories

| Type of Comment | Respondents | Percentage |
|--|--------------------|-------------------|
| Pro-consolidation | 332 | 8.5% |
| Anti-consolidation | 1,877 | 48.3% |
| Increase Resources for Agency Functions | 69 | 1.8% |
| Comments related to board responsiveness or operations | 64 | 1.6% |
| Continuing Education Related Comments | 109 | 2.8% |
| General Agency Complaints | 271 | 7.0% |
| Other Comments | 1,164 | 30.0% |
| Total | 3,886 | 100.0% |

The comments generally mirrored the sentiment of the general survey response, with the majority opposing the merger, with some supporting it. The arguments put forward in the comments provide insight into what respondents considered important.

Comments suggesting the agencies remain separate were primarily concerned with the two agencies having disparate functions, with the potential for a loss of agency focus on one function or the other. Some examples of comments opposing a merger:

"The two departments have totally different focuses. I do not believe the public's safety and concerns would be properly protected if these departments were combined!"

"The idea of consolidating too much causes more conflict and the chance of things backing up because [there] is too much of a work load and/or mixing things up. These departments do not seem to even correlate."

Generally, those in favor of a merger cited potential cost and efficiency improvements as reasons for the combination of the two agencies. Some examples of comments supporting a merger:

"Any consolidations should save tax dollars and we should EXPECT services to be [consistent] regardless of the structure. It should not be an either or. Expect results from all agencies."

"Consolidation should help to save on [personnel] and building overhead. Many businesses in WI have consolidated various [departments] to accommodate for lower income levels, the services provided to the state can do the same if there is a cost saving to be appreciate[d]."

The arguments made by commenters against a merger were also common when talking to stakeholder groups and agency staff, detailed later. Comments in favor of the merger assume savings, but given the limited overlap in agency responsibilities, these savings are limited, as examined in a later section of the study.

To summarize the public response to questions about a potential merger, respondents were generally opposed to merging the two agencies for two primary reasons. First, they did not expect improvement in the service provided to them in the event of a

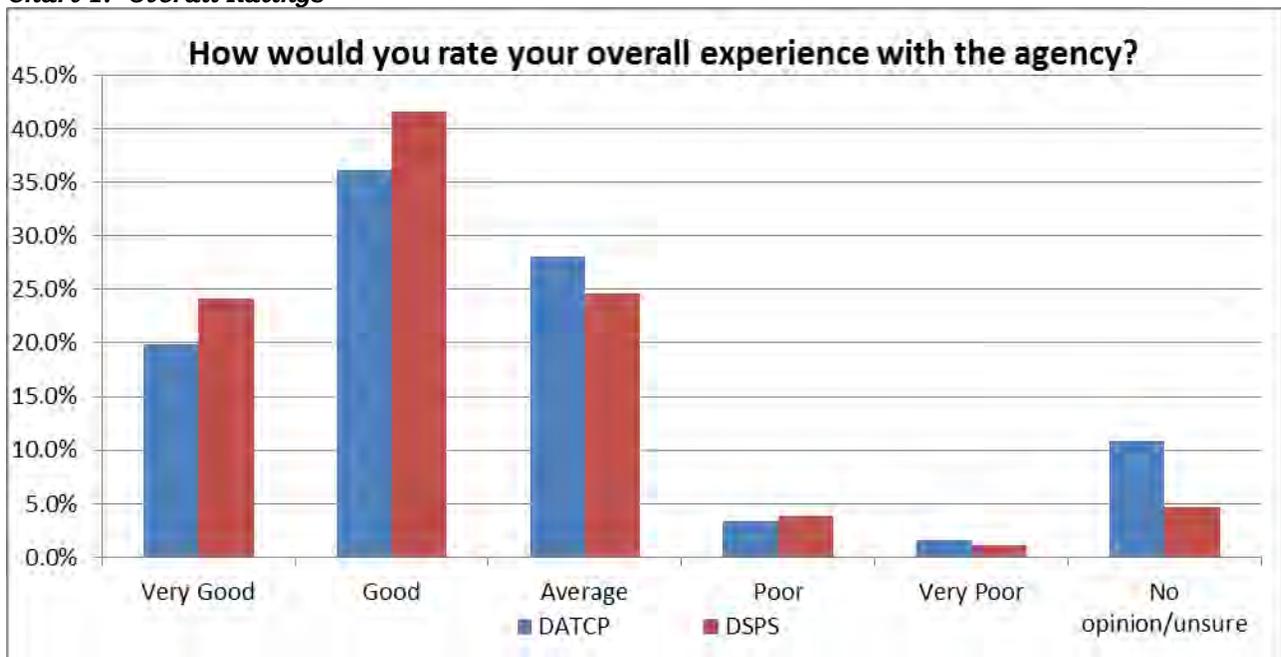
merger. Second, there is an expectation that the newly created agency would lose focus on the individual functions currently assigned to DSPS and DATCP.

Overall Performance Evaluation

Surveying agency customers about the overall performance of the agency gives insight into overall customer service quality. This provides an answer to the third question: Can a merger be recommended on the basis of poor performance on the part of either agency?

The following charts show the overall performance evaluation of two agencies: DSPS, DATCP. The following chart shows the responses to the question "How would you rate your overall experience with the agency?"

Chart 1: Overall Ratings



A total of 16,465 respondents expressed an opinion about DSPS's overall performance, with 1,555 respondents rating DATCP. Respondents expressed a relatively high overall rating of DATCP and DSPS. Respondents even had a relatively positive view of specific agency services such as the time that licenses are delivered after application. The following chart shows the responses to the question "How satisfied are you with the time it takes to receive your license after you apply?"

Chart 2: Response Time Satisfaction



In response to this question, 16,006 respondents expressed an opinion about DSPS's license response time, with 1,351 respondents rating DATCP. Generally, respondents were relatively satisfied with the service provided by the agencies. However, one area where there was less satisfaction was with the value provided by the licenses offered by DSPS. The following table shows that more than a quarter of respondents felt that they receive either minimal value or no value from the license provided by DSPS.

Table 12: License Value - DSPS

| How much value do you believe there is relative to fees paid to be a DSPS license holder? | | |
|--|---------------|-------------|
| Good Value | 3,790 | 23.3% |
| Some Value | 4,502 | 27.7% |
| Not Sure | 3,722 | 22.9% |
| Minimal Value | 3,516 | 21.6% |
| No Value | 726 | 4.5% |
| Total Respondents | 16,256 | 100% |

Because of the general level of satisfaction of the two agencies' customers, making drastic changes to operations is inappropriate at this time. Organizational changes may disrupt service and confuse customers, reducing a relatively high level of service. However, an examination of the practice of licensing professionals may be appropriate, given perceived value of the license.

Agency and Stakeholder Group Contact

The Legislature required that the study consult with both impacted stakeholders and agency staff. The survey provided a broad base of contact with stakeholders. However, some stakeholder groups chose to respond directly. One such contact was a

letter from a large number of representative groups from the agriculture industry. This letter expressed concerns with the potential for a merger, based around the potential for one combined agency to lose focus on agricultural issues in the face of the increased agency responsibilities. Another stakeholder contact, with a representative for the Veterinary Medical Association, indicated that its primary concerns with DSPP were related to ensuring that board meetings were consistently staffed and run smoothly. This group also formally requested that the Veterinary Board be moved from DSPP to DATCP. However, generally impacted groups were not strongly in favor of a merger of the two agencies. Please see appendices 7,8 and 9 for direct contact letters from stakeholder groups.

When meeting with agency leadership and staff, the recurring theme was the limited overlap between the two agencies' customers. Very rarely did either DSPP or DATCP indicate that they worked closely with the other agency, or referred customers to the other agency. Given the limited overlap, those consulted at the two agencies did not think that bolting one agency onto the other made sense, in terms of either creating internal efficiencies or improving customer service.

Part III: Fiscal Impact and Operational Issues of a Merger

After examining the operations of the two agencies included in the study, the fiscal savings from a potential merger would be limited. Each agency has significant field staff performing very different missions. Because of the varied nature of functions contained both within each agency and between the two agencies, most savings would be generated by eliminating executive unclassified positions and administrative positions.

There is no expected savings from combining the two agencies in terms of space costs, and no expected moving costs, since neither agency could be accommodated within the existing spaces available to either agency. If it was determined that all agency staff should be housed at one location, significant and costly expansion would be required of either the existing DSPS or DATCP facilities. Detailed cost estimates would need to be prepared at the time of the potential merger.

The largest portion of the savings would come from eliminating one set of executive unclassified staff for one of the agencies, including a secretary, deputy secretary, communications officer, assistant deputy secretary, chief legal counsel and a division administrator. The following table shows the expected savings from eliminating unclassified positions.

Table 13: Executive Staffing Savings

| Position | FTE | Salary | Fringe Benefits | Total |
|----------------------------|------------|------------------|------------------------|------------------|
| Secretary | 1.0 | \$110,000 | \$50,000 | \$160,000 |
| Deputy Secretary | 1.0 | 100,000 | 40,000 | 140,000 |
| Assistant Deputy Secretary | 1.0 | <u>100,000</u> | <u>40,000</u> | <u>140,000</u> |
| <i>Subtotal</i> | <i>6.0</i> | <i>\$310,000</i> | <i>\$130,000</i> | <i>\$440,000</i> |

Three additional statutory positions, a Communications Director, Chief Legal Counsel and Division administrator positions could be eliminated. However, the duties performed by these positions would still be required. Completing these duties would create the need for additional management or operational staff, mitigating the savings created by elimination of executive staff.

Additional appropriation reductions could be realized by eliminating administrative positions in each agency, specifically in the agencies' human resources and budget areas. Though the new agency would warrant larger staffing in these areas, the positions identified for elimination are positions that have been vacant for an extended period. The following table shows potential savings from the elimination of the administrative staff positions.

Table 14: Administrative Staffing Savings – Vacant Positions

| Position | FTE | Salary | Fringe | Total |
|---------------------------|------------|------------------|-----------------|------------------|
| Human Resources Manager | 1.0 | \$100,000 | \$40,000 | \$140,000 |
| Budget and Policy Analyst | 1.0 | <u>50,000</u> | <u>20,000</u> | <u>70,000</u> |
| <i>Subtotal</i> | | <i>\$150,000</i> | <i>\$60,000</i> | <i>\$210,000</i> |

Since these positions are vacant, expenditure savings are currently occurring and as a result eliminating them would not generate new savings. Additionally, these positions may be eliminated in response to 2013-15 biennial budget provision requiring the elimination of 450.0 FTE positions across state government, before a merger could take place. Therefore, while eliminating the positions would reduce budgeted appropriations, it may not result in a net reduction in expenditures.

Together, expected staff savings would equal \$610,000 annually, which is the equivalent of 0.2 percent of the combined agency budgets. However, a portion of these savings would be offset by costs related to merging the two agencies. Given the limited operational overlap between the agencies, the primary cost would be related to design of the new agency's Web site to incorporate the two different functions. This is estimated at \$40,000, which reduces potential savings generated from the merger.

A merger would also generate additional costs related to updating administrative code of the existing agencies, in order to ensure statutory and agency references were up-to-date. All agency forms and licenses would also need to be updated. While agency costs to make these updates may be limited, the cost to comply with state regulations would increase for the public.

Administrative and Policy Concerns

In addition to the limited savings generated from the merger, there are significant administrative and policy concerns about a potential merger. A combined agency would only have one set of executive officers. A review of the two secretaries' schedules indicates that accommodating all meetings with agency customers and industry representatives would be very difficult. This could potentially be alleviated by creating an additional deputy secretary position, which would further limit the savings generated by a merger.

Another major issue would be determining the authority that the existing DATCP board would have over the examining and advisory boards attached to DSPS. Currently, the DATCP board has the ability to review and approve or alter any administrative rules that come out of DATCP. If this structure was retained, the DATCP board would have jurisdiction to review any rules made by the Medical Examining Board or any other board attached to DSPS. The DATCP board does not have representation or expertise in most of the areas regulated by the DSPS boards. The DATCP board could be increased in size to accommodate representation for each of the new industry areas. However, determining representation on this board would be difficult, and accommodating representation from each DSPS board would make the DATCP board difficult to manage and potentially ineffective. This could be

resolved by eliminating DATCP board oversight over portions of the new agency, which would undermine the case for a combined agency.

Part IV: Conclusions and Recommendations

After consulting with the public via the survey, stakeholders, administrative and executive staff in both agencies and analyzing the potential for savings in both agencies as the result of a merger, this study recommends against combining the two agencies. The potential savings generated and unknown costs do not justify the potential disruption in service and confusion among stakeholders. Furthermore, given the limited overlap between the two agencies, it is unlikely that bolting one agency to the other will provide for enhanced efficiency and customer service for any of the agencies' customers. However, examining each agency did show ongoing attempts to improve customer service and operations at both agencies, as well as potential new initiatives.

In response to the request from the Wisconsin Veterinary Medical Association, the Veterinary Examining Board should be moved to DATCP. Additionally, all enforcement functions related to enforcement of the practice of veterinary medicine should be moved to DATCP. This change is feasible because historical relationship between the Veterinary Board and DATCP, as well as the close relationship between the veterinary profession and the agency. The department has significant expertise in the veterinary field, and the DATCP board has members that are familiar with animal health issues.

One area of emphasis related to DSPS service was an improvement of board meeting staffing functions. After examining the agency operations and stakeholder opinions, it appears that some boards function well, while others may be improved or potentially eliminated. The department should institute a system of training on board powers, functions and the rule-making process for both board members and board staff, which would improve the effectiveness of the staff. As part of this process, DSPS should work with other agencies, including the Department of Natural Resources, that have attached boards to determine best practices for board staffing.

Due to reduced lapse assumptions, DSPS should reexamine the fee structure via a fee study that is reviewed by the Joint Committee on Finance, with current lapse assumptions. The new review of fees should take into account all options to potentially reduce the cost of compliance for businesses, including reducing fees and lengthening the period for which a license is valid.

The study recommends that a comprehensive examination of existing examining and advisory boards should occur, in consultation with the impacted licensees, board members and professional organizations to standardize board practices, meeting schedules and actions on potential licenses. Further, given the differences in opinion among license holders about the value of their license, it may be reasonable to conduct a review of professional licensing generally to determine how to best ensure continued excellence in professional services in the state.

Both DATCP and DSPS are in the process of creating an electronic document and contact management system. At DATCP, this system will allow businesses that must hold multiple permits, for example separate permits to operate a dairy, haul milk and sell cattle, to have one record on file for all of the permits, instead of a separate, paper record for each permit. This will save permit holders time and effort in renewing and acquiring new permits. Additionally, this will allow DATCP staff to focus less on paper

processing and more on direct customer service. Given the difficulty of distributing the survey tool used in this study, and the poor response rate from DATCP licensees, there is clearly room for improvement in terms of electronic communications at the department.

A similar data management project is underway at DSPS, which will aid in further automating the licensing process. The process for licensing at DSPS is already Internet-based, but this project will work to streamline the licensing process and improve document management. Improved document management will allow for easier access to board materials and other important department communications by the public. The two agencies should continue on the path of automation and should consult with each other, other state agencies and the private sector to determine best practices in establishing a new content management software suite.

Over 380,000 individuals are licensed by DSPS in order to work in their chosen profession. Additionally, DSPS reviews the plans of most commercial buildings constructed in the state. This makes the agency one of the primary points of contact for these citizens and others that choose to do business in the state, on par with an organization like the Division of Motor Vehicles in the Department of Transportation. Contact with such agencies is often where individuals form their overall opinion of government effectiveness and efficiency.

Working to improve the customer experience with DSPS should be a top priority. This can be achieved by instituting a strategic planning program at DSPS and developing performance measures for the agency, with input from staff and stakeholders to significantly improve agency function and customer service. In addition, the State Controller's Office is conducting a fiscal audit of DSPS. Any recommendations from this report about financial policies and procedures should be examined to improve internal financial processes.

Finally, the agency presents opportunities for process streamlining through the creation of a Six Sigma/LEAN Government program. DATCP has instituted a Six Sigma program and has made significant process improvements. Customer service and agency efficiency may also benefit from an outside review of operational and leadership practices from an operational consultant. The following table outlines some of the existing LEAN Government initiatives currently underway at the two agencies.

Table 15: Current LEAN Government Initiatives

| Agency | Project | Goals, Results and Recommendations |
|--------|---|--|
| DATCP | Out of State Travel Authorization | <ul style="list-style-type: none"> • Redesign process flow to move finance notification to end of process. • Provide documentation of the process, and instructions for appeal of denied requests. • Enhance electronic submittal process, currently in use in one division, to provide departmentwide service. |
| DATCP | Division of Food Safety Dissemination of Lab Results/ Agricultural Resource Management Dissemination of Lab Results | <ul style="list-style-type: none"> • Scan lab analysis report upon printing and email a .pdf version of the report to appropriate field staff. • Set up a system through GovDelivery to generate automated messages for field inspectors. • Encourage greater use of electronic database containing lab results. • Print lab reports for archival purposes, but also stored as image in special drive as a pdf file. |
| DATCP | Feed Sampling in the Bureau of Agrichemical Management | <ul style="list-style-type: none"> • Determine the appropriate number of surveillance feed samples to collect each year. • Develop standard procedures and guidance to ensure the appropriate number of surveillance feed samples are collected each year. • Increase, by a minimum of 200%, the number of surveillance feed samples collected in 2013 over those collected in 2012. |
| DATCP | SWRM cost-share transfers: Simplifying routine approvals | <ul style="list-style-type: none"> • Identify more efficient ways to process this routine transaction. • Reduce reliance on paper documentation. • Reduce workload for frontline staff. |
| DATCP | Division of Ag Resource Management - The Staff Trackers | <ul style="list-style-type: none"> • Information is collected in a timely and efficient manner. • Eliminate redundancy where it is found. • Reduce collection of inaccurate information. |

| | | |
|-------|--|--|
| DATCP | Bureau of Labs - Records Storage and Retrieval | <ul style="list-style-type: none"> • Determine the deficiencies of the current system and propose resolutions. • Define a systematic, efficient and applicable method for categorizing the records and documents. • Design a uniform and systematic nomenclature to be used for storage and retrieval of the records. • Provide sufficient directions to the BLS staff to organize, label their documents to be delivered for storage including the delivery location. |
| DATCP | Bulk Milk Weigher and Sampler Program | <ul style="list-style-type: none"> • Revise the Bulk Milk Weigher and Sampler (BMWS) licensing process to reduce cost for BMWS exam proctoring and field evaluations. • Ensure all BMWS license applicants receive an exam and licensing inspection before issuance of a temporary BMWS license. • Streamline the licensing process to increase external and internal customer satisfaction. • Improve Grade A dairy plant survey results by reducing the number of temporary BMWS licensees, licensed BMWS, and Appendix N samplers who are not inspected within the required period. |
| DATCP | Establish a consistent renewal process for registrations, certifications and licenses | <ul style="list-style-type: none"> • Standardize the process followed by program staff when reviewing applications for renewal of registrations, certifications and licenses. • Establish and measure baseline expectations for processing applications. • Reduce the amount of time required to renew a registration, certification or license. • Reduce the number of mistakes when verifying required information. |
| DSPS | Employee Training | <ul style="list-style-type: none"> • Improve process for training and approvals. |

| | | |
|------|---|--|
| DSPS | Complaint Intake/Screening and Monitoring PAP Processes | <ul style="list-style-type: none"> To increase staff productivity and capacity through the improvement of the intake/screening, monitoring/PAP and records process. Processes have been streamlined and workloads appear to be balancing. A review/audit will be done by May 31, 2013 to assess the success of the project. |
| DSPS | Paperless Office - Phase 1 | <ul style="list-style-type: none"> Promote operational effectiveness, a productive use of space, simplified processes and maximize staff resources. Eliminated 214 file cabinets, 18 bookcases, 144 feet of open shelving. |
| DSPS | Practice Question Procedure | <ul style="list-style-type: none"> Clarify the department's role as a regulatory agency and ensure that all documents interpreting statutes are identified. A new process for receiving and responding to professional practice questions was put in place. |
| DSPS | Electronic Plan Review - Phase 2 | <ul style="list-style-type: none"> Improve the electronic plan review process through an analysis of current processes, procedures and tools. |
| DSPS | Case Resolution | <ul style="list-style-type: none"> Increase stakeholder satisfaction through the improvement of the case resolution process within the Division of Legal Services and Compliance. Achieved by target date and maintained consistency (52% reduction in pending caseload). |
| DSPS | Complaint Intake and Screening Process | <ul style="list-style-type: none"> Improve operational efficiency and stakeholder satisfaction through the centralization of complaint processing into the Division of Legal Services and Compliance. |
| DSPS | Document Consistency | <ul style="list-style-type: none"> Increase staff productivity, reduce errors, and create consistency in the production of documents by creating quality review processes and forms. Resulted in a much more comprehensive, review of legal work product along with a reduction in errors. Reduction in rejected proposed resolutions by professional boards. |

Appendix 1: Statutory Charge

2013 Wisconsin Act 20, Section 9101(3s): Study concerning consolidation of the departments of safety and professional services and agriculture, trade and consumer protection.

- (a) The department of administration shall conduct a study concerning the consolidation of the functions currently being performed by the departments of safety and professional services and agriculture, trade and consumer protection under a single new agency in the executive branch of state government, to be named the department of agriculture, regulation, and trade.
- (b) In conducting the study under paragraph (a), the department of administration shall consult with the departments of safety and professional services and agriculture, trade and consumer protection and with the boards and councils attached to or under those agencies.
- (c) In conducting the study under paragraph (a), the department of administration shall consult members of the public who may be affected by the consolidation of the departments of safety and professional services and agriculture, trade and consumer protection and the creation of the department of agriculture, regulation, and trade.
- (d) No later than January 1, 2014, the department of administration shall submit a report of its findings from the study conducted under paragraph (a) to the joint committee on finance and, in the manner provided under section 13.172 (3) of the statutes, to the appropriate standing committees of the legislature. That report shall set forth the department of administration's recommendations concerning the proposed consolidation described under paragraph (a). If the department recommends consolidation, the report shall include the department's recommendations concerning all of the following:
 - 1. The organizational structure, programmatic functions, and performance objectives of the department of agriculture, regulation, and trade.
 - 2. Any reduction in staff that may be accomplished as a result of the consolidation of the departments of safety and professional services and agriculture, trade and consumer protection.
 - 3. Any board or council that may be eliminated as a result of the consolidation of the departments of safety and professional services and agriculture, trade and consumer protection.
 - 4. Any adjustment to credentialing fees that may be appropriate and the capability of revenue from credentialing fees to support the operations of the department of agriculture, regulation, and trade.
 - 5. Any function of or program under the departments of safety and professional services and agriculture, trade and consumer protection that should be transferred to an agency other than the newly created department of agriculture, regulation, and trade.
 - 6. Any way to improve the services to be provided by the department of agriculture, regulation, and trade.
- (e) If the department of administration recommends consolidation in its report under paragraph (d), the department shall also submit with that report draft legislation that implements, effective July 1, 2015, the department's recommendations made in the report.

Appendix 2: Copy of Generic Outreach Email sent to Survey Respondents

Good morning,

We are contacting you today as we would appreciate your feedback (including feedback from your organizations board and members) about possibly merging the Department of Safety and Professional Services (DSPS) and the Department of Agriculture, Trade and Consumer Protection (DATCP). Your input about how this consolidation may impact you is very valuable to us.

The 2013-15 state budget calls for a study about consolidating these two agencies. DSPS manages the licensing and regulation of professions in health, business and construction trades. They also oversee state building safety codes and provide services related to plan review, permit issuance, building and component inspection, and safety codes. DATCP is responsible for the promotion and regulation of Wisconsin's agriculture industry, including Agriculture Resource Management and Animal Health, as well as the oversight of food safety and consumer protection.

We ask that you complete the survey and forward this email to your members for their response so we can better understand how a potential consolidation may affect you. Your answers and contact information will be kept confidential and will not be used outside of the scope of this survey. All survey results will be tallied for any reporting purposes.

[TAKE THE SURVEY – your answers will be kept confidential](#)

Thank you in advance for your participation and input.
Office of Business Development

Note: throughout the survey, you will see the term 'license' which refers to any license, credential, certification, registration or permit. Please view the term to mean the document a state agency issues as a requirement to do business, perform an occupation or specific work activity in the State of Wisconsin.

Appendix 3: Survey Questions

Page 1

State Agency Involvement

My primary purpose for contact with an agency is: Select at least 1 and no more than 6.

- Obtain or renew an occupational license
- Register my business
- Obtain a permit for a specific activity
- I am a member of a Board or Council affiliated with an Agency
- I am a Representative of a Trade Association with interests to an Agency
- Other with significant Agency contact
- None of the Above

Page 2

Background Information

In which county do you reside?

To do business in Wisconsin, I have contact with the following agencies: Select at least 1 and no more than 3.

- Department of Safety and Professional Services (DSPA)
- Department of Agriculture, Trade and Consumer Protection (DATCP)
- Other agencies
- None

Page 3

Additional Agencies

Select additional agencies Select no more than 5.

- Children and Families, Department of
- Financial Institutions, Department of
- Health Services, Department of
- Insurance, Office of the Commissioner of
- Natural Resources, Department of

- Public Instruction, Department of
- Revenue, Department of
- Workforce Development, Department of
- Not on list, please specify

Enter Department Name

Page 4

Employee Count

In which county is your business located?

-- None --

How many full time people do you employ?

How many part time people do you employ?

Page 5

Profession or Industry

What best represents your profession or industry sector

- Health Professions
- Business Professions
- Trades Professions
- Manufactured Housing
- Mixed Martial Arts/Boxing

Page 6

Trade Professions

Select category.

- | | | |
|---|---|-------------------------------------|
| <input type="checkbox"/> Fire Sprinkler | <input type="checkbox"/> Dwellings, Structures, Sites | <input type="checkbox"/> Mechanical |
| <input type="checkbox"/> Blasting | <input type="checkbox"/> Conveyance | <input type="checkbox"/> Electrical |

Plumbing

Inspection

Agriculture/Food Industry Professions

Select license

- No license or permit required
- Animal Control Facility (eff. 6/1/2011)
- Animal Dealer License
- Animal Food Processor License
- Animal Import Permit (certain animals)
- Animal Market License
- Animal Shelter (eff. 6/1/2011)
- Animal Transport Vehicle (animal dealers, markets and truckers)
- Animal Trucker License
- Animals Diseased; Permit to Move
- Apiary Inspection Certificate; Interstate Movement
- Bulk Milk Tanker; Grade A Permit
- Bulk Milk Tanker; License to Operate
- Bulk Milk Weigher and Sampler License
- Butter Grader License
- Buttermaker License
- Cattle and Bison; Import Permit
- Cattle/Goats; Johne's Disease Herd Classification
- Cattle; Burcellosis-Free Herd Certification
- Cattle; Johne's Disease Vaccination Approval
- Cattle; Tuberculosis-Free Herd Certificate
- Cheese Grader License
- Cheese Logo (Wisconsin); Permit to Use
- Cheesemaker License
- Christmas Tree Grower License
- Dairy Farm; Grade A Permit
- Dairy Farm; Milk Producer License
- Dairy Plant - Grade A BMT Cleaning Facility
- Dairy Plant License

- Dairy Plant; Grade A Permit
- Dating Service
- Dead Animal Collector License
- Dead Animals; Carcass Dealer Registration
- Dead Animals; Transport Vehicle Permit
- Deer and Elk (Farm-Raised); Brucellosis Free Herd
- Deer and Elk (Farm-Raised); CWD Herd Status Program
- Deer and Elk (Farm-Raised); Herd Registration
- Deer and Elk (Farm-Raised); Hunting Preserve Registration Certificate
- Deer and Elk (Farm-Raised); TB Accredited Free Certification
- Deer and Elk (Farm-Raised); TB Qualified Herd Certification
- Deer and Elk; Import Permit
- Dog Breeder (eff. 6/1/2011)
- Dog Breeding Facility (eff. 6/1/2011)
- Dog Dealer (eff. 6/1/2010)
- Dog Dealer; Out-of-State (eff. 6/1/2011)
- Equine Quarantine Station; Permit
- Feed (Commercial); License to Manufacture or Distribute
- Feedlot (Approved Import Feedlot); Permit
- Fertilizer Product <24% NPK; Permit
- Fertilizer; License to Manufacture or Distribute
- Fish Farm Registration
- Fish Import Permit
- Fitness Center
- Food Marketing Permit (temporary permit for non-conforming label)
- Food or Farm Product Grader; License
- Food Processing Plant License (Wholesale)
- Food Retail Inspection; Agent County or Municipality
- Food Retail License
- Food Warehouse License
- Fur Farm
- Future Service Plan (Buyers Club)
- Ginseng Grower and Dealer Registration
- Goats; Brucellosis-Free Herd Certificate
- Goats; Tuberculosis-Free Herd Certificate
- Grain Dealer License

- Grain Warehouse Keeper License
- Grease Processor License
- Honey Producer - Certified
- Humane Officer Certification
- Industry Bulk Milk Truck / Tanker Inspector - Appointed
- Laboratory Analyst Certification (Dairy, Food and Water Labs)
- Laboratory Certification (Dairy, Food and Water Labs)
- Laboratory; Milk Screening Test Approval
- Landspreading Permit; Soils Containing Spilled Agrichemicals
- Liming Materials; Approval to Sell by Volume
- Liming Materials; License to Sell
- Livestock Premises Registration
- Livestock; Brand Registration
- Livestock; Permit to Move from Slaughter
- Maple Sap Processor Registration
- Meat Broker or Distributor Registration
- Meat Establishment License
- Meat; Mobile Slaughter or Processing; Registration Certificate
- Milk and Cream Tester License
- Milk Contractor License
- Milk Distributor License
- Mobile Air Conditioners; repair or Service Business; Registration
- Mobile Air Conditioners; Technician Registration
- Nursery Dealer License
- Nursery Grower License
- Pasteurizer Operator -- not a license or permit
- Pesticide Applicator Certification; Commercial
- Pesticide Applicator Certification; Private
- Pesticide Commercial Application Business License
- Pesticide Commercial Applicator (Individual) License
- Pesticide Dealer-Distributor License
- Pesticide Emergency Use Permit
- Pesticide Experimental Use Permit
- Pesticide Manufacturer & Labeler License
- Pesticide Special Local Need Registration
- Pesticide Special Use Permit

- Plant Health (Phyto Sanitary) Certificate
- Plant Pest (or Biological Control Agent); Permit to Move or Release
- Poultry; Certified Pullorum Tester (National Poultry Improvement Plan)
- Poultry; Disease-Free Flock Certification (National Poultry Improvement Plan)
- Poultry; Wisconsin Associate Flock Certification
- Poultry; Wisconsin Tested Flock Certification
- Public Warehouse Keeper License
- Renderer License
- Seed Labeler License
- Sheep; Brucella Ovis-Free Certificate
- Soil and Plant Additive; License to Sell
- Soil and Plant Additive; Product Permit
- Swine; Brucellosis-Free Herd Certificate
- Swine; Pseudorabies - Monitored Herd Certification
- Swine; Pseudorabies Qualified Negative Grow-Out Herd Certification
- Swine; Pseudorabies Vaccination Permit
- Swine; Pseudorabies Qualified Negative Herd Certification
- Telephone Solicitors Registration (Wisconsin "No Call" Program)
- Time-Share Seller; Security Requirement
- Vegetable Contractor License
- Veterinarian; Certification to Perform Official Disease Control Functions
- Weather Modification License
- Weather Modification Project Permit
- Weight Reduction Center; Security Requirement
- Weights and Measures; Liquid Fuel Vehicle Tank Meter License
- Weights and Measures; LP Gas Meter License
- Weights and Measures; Service Company License
- Weights and Measures; Service Technician Registration
- Weights and Measures; Vehicle or Livestock Scale Permit
- Weights and Measures; Vehicle Scale Operator License

Boxing and Mixed Martial Arts

Select license

- Boxing Contestant
- Boxing or Mixed Martial Arts Judge
- Boxing or Mixed Martial Arts Promoter
- Boxing or Mixed Martial Arts Referee
- Boxing or Mixed Martial Arts Ringside Physician
- Boxing or Mixed Martial Arts Timekeeper
- Mixed Martial Arts Contestant

Business Professions

Select license

- Accountant, Certified Public
- Accounting Corporation or Establishment
- Aesthetician
- Aesthetics Establishment
- Aesthetics Instructor
- Aesthetics School
- Appraiser, Certified General
- Appraiser, Certified Residential
- Appraiser, Licensed
- Architect
- Athlete Agent
- Auction Company
- Auctioneer
- Barber
- Barbering Apprentice
- Barbering Establishment
- Barbering Instructor
- Barbering Manager
- Barbering School
- Cemetery Authority (Licensed)
- Cemetery Authority (Registered)
- Cemetery Preneed Seller
- Cemetery Salesperson

- Certificate of Authorization: Architectural, Engineering or Designer of Engineering Systems Corp.
- Certificate of Authorization: Geology, Hydrology or Soil Science Corp.
- Certified General Appraiser
- Certified Public Accountant
- Certified Residential Appraiser
- Charitable Organizations
- Cosmetology Apprentice
- Cosmetology Establishment
- Cosmetology Instructor
- Cosmetology Manager
- Cosmetology Practitioner
- Cosmetology School
- Crematory Authority
- Designer of Engineering Systems
- Electrologist
- Electrology Establishment
- Electrology Instructor
- Electrology School
- Engineer, Professional
- Firearms Certifier
- Firearms Permit
- Fund-Raising Counsel
- Funeral Director
- Funeral Establishment
- Geologist
- Home Inspector
- Hydrologist
- Interior Designer
- Juvenile Martial Arts Instructor
- Land Surveyor
- Landscape Architect
- Licensed Appraiser
- Manicuring Establishment
- Manicuring Instructor
- Manicuring School
- Manicurist

- Nursing Home Administrator
- Peddler
- Private Detective
- Private Detective/Security Guard Agency
- Private Security Permit
- Professional Employer Group
- Professional Employer Organization
- Professional Engineer
- Professional Fund Raiser
- Real Estate Broker
- Real Estate Business Entity
- Real Estate Salesperson
- Real Estate Salesperson Apprentice
- Soil Scientist
- Timeshare Salesperson
- Warehouse for Cemetery Merchandise

Health Professions

Select license

- Acupuncturist
- Advanced Practice Nurse Prescriber
- Anesthesiologist Assistant
- Art Therapist
- Athletic Trainer
- Audiologist
- Behavior Analyst
- Chiropractic Radiological Technician
- Chiropractic Technician
- Chiropractor
- Clinical Substance Abuse Counselor
- Clinical Supervisor In Training
- Controlled Substances Special Use Authorization
- Dance Therapist

- Dental Hygienist
- Dentist
- Dietitian
- Drug or Device Manufacturer
- Hearing Instrument Specialist
- Independent Clinical Supervisor
- Intermediate Clinical Supervisor
- Licensed Midwives
- Licensed Practical Nurse
- Licensed Radiographer
- Limited X-Ray Machine Operator Permit
- Marriage and Family Therapist
- Massage Therapist or Bodywork Therapist
- Music Therapist
- Nurse - Midwife
- Occupational Therapist
- Occupational Therapy Assistant
- Optometrist
- Perfusionist
- Pharmacist
- Pharmacy (In State)
- Pharmacy (Out of State)
- Physical Therapist
- Physical Therapist Assistant
- Physician Assistant
- Physician
- Podiatrist
- Prevention Specialist
- Prevention Specialist in Training
- Private Pract. School Psychologist
- Professional Counselor
- Psychologist
- Registered Nurse
- Registered Sanitarian
- Respiratory Care Practitioner
- Sign Language Interpreter

- Sign Language Interpreter (Restricted)
- Social Worker
- Social Worker - Advanced Practice
- Social Worker - Independent
- Social Worker - Licensed Clinical
- Social Worker - Training Certificate
- Speech-Language Pathologist
- Substance Abuse Counselor
- Substance Abuse Counselor in Training
- Veterinarian
- Veterinary Technician
- Wholesale Distributor of Prescription Drugs

Manufactured Homes

Select license

- Manufactured Home Dealer
- Manufactured Home Installer
- Manufactured Home Manufacturer
- Manufactured Home Salesperson
- Manufactured Home Title
- Manufactured Home Community

Trades Professions - Fire Sprinkler

Select license

- Automatic Fire Sprinkler Contractor
- Automatic Fire Sprinkler Contractor - Maintenance
- Automatic Fire Sprinkler Fitter - Maintenance
- Automatic Fire Sprinkler System Apprentice
- Automatic Fire Sprinkler System Tester
- Automatic Fire Sprinkler System Tester Learner
- Journeyman Automatic Fire Sprinkler Fitter

Trades Professions - Blasting and Fireworks

Select license

- Blaster Class 1
- Blaster Class 2
- Blaster Class 3
- Blaster Class 4
- Blaster Class 5
- Blaster Class 6
- Blaster Class 7
- Fireworks Manufacturer

Trades Professions - Conveyances

Select license

- Elevator Apprentice
- Elevator Apprentice – Restricted
- Elevator Contractor
- Elevator Helper
- Elevator Mechanic
- Elevator Mechanic – Restricted
- Lift Apprentice
- Lift Helper
- Lift Mechanic

Trades Professions - Dwellings, Structures and Sites

Select license

- Dwelling Contractor
- Dwelling Contractor – Restricted
- Dwelling Contractor Qualifier

- Manufactured Home Installer
- Manufactured Home Manufacturer
- Manufactured Home Salesperson
- Soil Tester
- Weld Test Conductor
- Welder

Trades Professions - Electrical

Select license

- Beginner Electrician
- Electrical Apprentice
- Electrical Contractor
- Industrial Electrical Apprentice
- Industrial Journeyman Electrician License
- Journeyman Electrician
- Master Electrician
- Residential Electrical Apprentice
- Residential Journeyman Electrician License
- Residential Master Electrician License

Trades Professions - Inspection

Select license

- Boiler/Pressure Vessel Inspector
- Commercial Building Inspector
- Commercial Electrical Inspector
- Commercial Plumbing Inspector
- Elevator Inspector
- POWTS Inspector
- Rental Weatherization Inspector
- Soil Erosion Inspector
- Tank System Inspector

- UDC Construction Inspector
- UDC Electrical Inspector
- UDC HVAC Inspector
- UDC Inspection Agency
- UDC Plumbing Inspector

Trades Professions - Mechanical

Select license

- HVAC Contractor
- HVAC Qualifier
- Liquefied Gas Supplier
- Liquefied Gas Supplier – Restricted
- Refrigerant Handling Technician

Trades Professions - Plumbing

Select license

- Cross Connection Control Tester
- Journeyman Plumber
- Journeyman Plumber Restricted Appliance
- Journeyman Plumber Restricted Service
- Master Plumber
- Master Plumber Restricted Appliance
- Master Plumber Restricted Service
- Pipelayer
- Plumbing Apprentice
- Plumbing Learner Restricted Appliance
- Plumbing Learner Restricted Service
- POWTS Maintainer
- Utility Contractor

The following questions were asked about each of the following agencies:
Department of Agriculture, Trade and Consumer Protection
Department of Safety and Professional Services
Department of Children and Families
Department of Financial Institutions
Department of Health Services
Office of the Commissioner of Insurance
Department of Natural Resources
Department of Revenue
Department of Workforce Development
Other Agencies

Respondents were only asked these questions about an agency if they identified the agency as one they interacted with to do business.

Answer only those questions that apply to you

How would you rate your overall experience with the agency?

- Very Poor
- Poor
- Average
- Good
- Very Good
- No opinion/unsure

How would you rate the licensing process?

- Very Poor
- Poor
- Average
- Good
- Very Good
- No opinion/unsure

After submitting your application, what length of time did you wait for your license?Select no more than 1.

- 3 or less business days
- 4 - 7 business days
- 8 - 29 business days
- 30 days or longer

How satisfied are you with the time it takes to receive your license after you apply?

- Very dissatisfied
- Somewhat dissatisfied
- No opinion
- Somewhat satisfied
- Very satisfied

As a license holder, how do you stay up-to-date on changes in state law as it relates to your industry?Select no more than 1.

- Membership Association
- State Agency
- None of the above
- Other, please specify

How much value do you believe there is relative to fees paid to be a license holder?

- Good Value
- Some Value
- Not Sure
- Minimal Value
- No Value

How frequently, if at all, should you be required to renew your license? Select no more than 1.

- Leave as is
- Renew more frequently
- Renew less frequently
- Do not require renewal at all

What is your opinion of the continuing education (CE) requirements, if any, for your license? Select no more than 1.

- No CE is required now
- Ok as is
- Reduce the CE requirement
- Increase the CE requirement
- Do not require CE
- Additional comments on CE
- No opinion

Enter additional comments:

How would you improve your experience

How would you improve your experience with the licensing process

Consolidation Input

Do you believe there should be one agency responsible solely for Agriculture and food safety in Wisconsin? Select at least 1 and no more than 1.

- Definitely Yes
- Probably Yes
- Not Sure
- Probably No
- Definitely No

Do you believe there should be one agency responsible for all licensing and permitting in Wisconsin? Select at least 1 and no more than 1.

- Definitely Yes
- Probably Yes
- Not Sure
- Probably No
- Definitely No

If Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection were consolidated how do you think the focus of the new agency might change the current functions such as agriculture, food safety, consumer protection, building plan review and professional licensing?

- Reduce focus
- Stay the same
- Increase focus
- Unsure

How do you believe a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would affect the services to you as a license holder?

- Greatly reduce service
- Reduce service somewhat
- Not sure
- Improve service somewhat
- Greatly improve service

Do you believe that consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection will result in savings?

- Definitely Yes
- Probably Yes
- Not Sure
- Probably No
- Definitely No

If consolidation results in lower costs to the agency, how would you want the savings used?

- Return savings to taxpayers
- Use savings to reduce license fees
- Invest savings to provide better service
- Other, please specify

If no savings were found from a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would you support the general concept of consolidation?

- Definitely Yes
- Probably Yes
- Not Sure
- Probably No
- Definitely No

Please use the space below to provide additional comments

Appendix 4: Respondent Demographics

| Table 1: Total Respondents by County | | | | | |
|---|--------------------|-------------------|---------------|--------------------|-------------------|
| County | Respondents | Percentage | County | Respondents | Percentage |
| None Indicated | 8,340 | 33.4% | Marathon | 405 | 1.6% |
| Adams | 54 | 0.2% | Marinette | 105 | 0.4% |
| Ashland | 48 | 0.2% | Marquette | 38 | 0.2% |
| Barron | 115 | 0.5% | Menominee | 2 | 0.0% |
| Bayfield | 57 | 0.2% | Milwaukee | 2,102 | 8.4% |
| Brown | 687 | 2.8% | Monroe | 108 | 0.4% |
| Buffalo | 34 | 0.1% | Oconto | 105 | 0.4% |
| Burnett | 43 | 0.2% | Oneida | 144 | 0.6% |
| Calumet | 133 | 0.5% | Outagamie | 443 | 1.8% |
| Chippewa | 209 | 0.8% | Ozaukee | 342 | 1.4% |
| Clark | 62 | 0.2% | Pepin | 26 | 0.1% |
| Columbia | 188 | 0.8% | Pierce | 67 | 0.3% |
| Crawford | 55 | 0.2% | Polk | 93 | 0.4% |
| Dane | 2,518 | 10.1% | Portage | 186 | 0.7% |
| Dodge | 225 | 0.9% | Price | 51 | 0.2% |
| Door | 117 | 0.5% | Racine | 422 | 1.7% |
| Douglas | 103 | 0.4% | Richland | 64 | 0.3% |
| Dunn | 119 | 0.5% | Rock | 348 | 1.4% |
| Eau Claire | 362 | 1.5% | Rusk | 24 | 0.1% |
| Florence | 10 | 0.0% | Saint Croix | 204 | 0.8% |
| Fond du Lac | 308 | 1.2% | Sauk | 190 | 0.8% |
| Forest | 15 | 0.1% | Sawyer | 58 | 0.2% |
| Grant | 117 | 0.5% | Shawano | 83 | 0.3% |
| Green | 150 | 0.6% | Sheboygan | 289 | 1.2% |
| Green Lake | 57 | 0.2% | Taylor | 41 | 0.2% |
| Iowa | 79 | 0.3% | Trempealeau | 66 | 0.3% |
| Iron | 23 | 0.1% | Vernon | 73 | 0.3% |
| Jackson | 46 | 0.2% | Vilas | 86 | 0.3% |
| Jefferson | 239 | 1.0% | Walworth | 246 | 1.0% |
| Juneau | 49 | 0.2% | Washburn | 62 | 0.2% |
| Kenosha | 284 | 1.1% | Washington | 437 | 1.8% |
| Kewaunee | 61 | 0.2% | Waukesha | 1,468 | 5.9% |
| La Crosse | 409 | 1.6% | Waupaca | 132 | 0.5% |
| Lafayette | 50 | 0.2% | Waushara | 58 | 0.2% |
| Langlade | 59 | 0.2% | Winnebago | 436 | 1.7% |
| Lincoln | 66 | 0.3% | Wood | 237 | 0.95% |
| Manitowoc | 217 | 0.9% | | | |
| Counties Represented | | 72 | | | |
| Total Respondents | | 24,949 | | | |

| Table 2: Respondents by Profession | | |
|---|--------------------|-------------------------|
| Profession | Respondents | Percent of Total |
| Health Professions | 9,838 | 39.4% |
| No Response | 7,451 | 29.9% |
| Business Professions | 5,194 | 20.8% |
| Trades Professions | 1,920 | 7.7% |
| Manufactured Housing | 21 | 0.1% |
| Mixed Martial Arts/Boxing | 14 | 0.1% |
| <i>Subtotal</i> | <i>24,438</i> | <i>98.0%</i> |
| More than One Response | | |
| Business Professions; Trades Professions | 210 | 0.8% |
| Health Professions; Business Professions | 187 | 0.7% |
| Health Professions; Trades Professions | 61 | 0.2% |
| Health Professions; Business Professions; Trades Professions | 28 | 0.1% |
| Business Professions; Trades Professions; Manufactured Housing | 9 | 0.0% |
| Trades Professions; Manufactured Housing | 9 | 0.0% |
| Business Professions; Manufactured Housing | 4 | 0.0% |
| Business Professions; Trades Professions; Mixed Martial Arts/Boxing | 1 | 0.0% |
| Health Professions; Business Professions; Trades Professions; Manufactured Housing; Mixed Martial Arts/Boxing | 1 | 0.0% |
| Health Professions; Mixed Martial Arts/Boxing | 1 | 0.0% |
| <i>Subtotal</i> | <i>511</i> | <i>2.1%</i> |
| Grand Total | 24,949 | 100.0% |

| Table 3: Respondents by Reason for Agency Contact | | |
|--|--------------------|-------------------------|
| Reason for Contact | Respondents | Percent of Total |
| Obtain or renew an occupational license | 16,921 | 65.5% |
| None of the Above | 2,880 | 11.1% |
| Obtain or renew an occupational license; Register my business | 1,162 | 4.5% |
| Obtain or renew an occupational license; Obtain a permit for a specific activity | 611 | 2.4% |
| Obtain or renew an occupational license; Register my business; Obtain a permit for a specific activity | 503 | 1.9% |
| Other with significant Agency contact | 462 | 1.8% |
| Obtain a permit for a specific activity | 384 | 1.5% |
| Register my business | 355 | 1.4% |
| Obtain or renew an occupational license; Other with significant Agency contact | 314 | 1.2% |
| I am a member of a Board or Council affiliated with an Agency | 246 | 1.0% |
| I am a Representative of a Trade Association with interests to an Agency | 207 | 0.8% |
| Multiple Responses - Other | 904 | 3.5% |
| Grand Total | 24,949 | 100.0% |
| Table 4: Respondents by Source of Survey Contact | | |

| Source of Contact | Respondents | Percent of Total |
|--|--------------------|-------------------------|
| License Holders | 23,438 | 93.9% |
| Other via Office of Business Development | 497 | 2.0% |
| DSPS Stakeholders | 336 | 1.3% |
| Legislature | 173 | 0.7% |
| Boards and Councils | 147 | 0.6% |
| DOA/Wisconsin Website | 128 | 0.5% |
| Not Available | 39 | 0.2% |
| Chamber via Office of Business Development | 33 | 0.1% |
| Bus Development via Office of Business Development | 20 | 0.1% |
| DATCP Lists | 12 | 0.0% |
| DSPS Lists | 8 | 0.0% |
| Lt Governor Lists | 2 | 0.0% |
| Cooperative Network | 1 | 0.0% |
| Grand Total | 24,949 | 100.0% |

| Table 5: Categorized responses to the question: How many full time people do you employ? | | Categorized responses to the question: How many part time people do you employ? | |
|---|--------------------|--|--------------------|
| Employees | Respondents | Employees | Respondents |
| Zero | 573 | Zero | 980 |
| Between 1-10 Employees | 1,063 | Between 1-10 Employees | 829 |
| Between 11-50 Employees | 224 | Between 11-50 Employees | 91 |
| Between 51-100 Employees | 53 | Between 51-100 Employees | 10 |
| Between 101-1000 Employees | 51 | Between 100-1000 Employees | 26 |
| Over 1001 Employees | 10 | Over 1001 Employees | 2 |
| <i>Subtotal</i> | <i>1,974</i> | <i>Subtotal</i> | <i>1,938</i> |
| No response | 22,975 | No response | 23,011 |
| Total | 24,949 | Total | 24,949 |

Appendix 5: Complete Survey Responses - DATCP and DSPS

| Table 1: Do you believe there should be one agency responsible for all licensing and permitting in Wisconsin? | | |
|--|--------------------|-------------------|
| Response | Respondents | Percentage |
| No Response | 4,247 | 17.0% |
| Definitely No | 1,408 | 5.6% |
| Probably No | 1,968 | 7.9% |
| Not Sure | 2,917 | 11.7% |
| Probably Yes | 5,861 | 23.5% |
| Definitely Yes | 8,548 | 34.3% |
| Total Respondents | 24,949 | 100.0% |

| Table 2: Do you believe there should be one agency responsible solely for Agriculture and food safety in Wisconsin? | | |
|--|--------------------|-------------------|
| Response | Respondents | Percentage |
| No Response | 4,248 | 17.0% |
| Definitely No | 875 | 3.5% |
| Probably No | 1,177 | 4.7% |
| Not Sure | 4,377 | 17.5% |
| Probably Yes | 5,855 | 23.5% |
| Definitely Yes | 8,417 | 33.7% |
| Total Respondents | 24,949 | 100.0% |

| Table 3: How do you believe a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would affect the services to you as a license holder? | | |
|---|--------------------|-------------------|
| Response | Respondents | Percentage |
| No Response | 4,430 | 17.8% |
| Greatly improve service | 192 | 0.8% |
| Improve service somewhat | 760 | 3.0% |
| Not sure | 8,308 | 33.3% |
| Reduce service somewhat | 6,270 | 25.1% |
| Greatly reduce service | 4,989 | 20.0% |
| Total Respondents | 24,949 | 100.0% |

Table 4: Do you believe that consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection will result in savings?

| Response | Respondents | Percentage |
|--------------------------|--------------------|-------------------|
| No Response | 4,352 | 17.4% |
| Definitely No | 1,401 | 5.6% |
| Probably No | 5,319 | 21.3% |
| Not Sure | 6,245 | 25.0% |
| Probably Yes | 6,209 | 24.9% |
| Definitely Yes | 1,423 | 5.7% |
| Total Respondents | 24,949 | 100.0% |

Table 5: If no savings were found from a consolidation of Department of Safety and Professional Services and Department of Agriculture, Trade and Consumer Protection would you support the general concept of consolidation?

| Response | Respondents | Percentage |
|--------------------------|--------------------|-------------------|
| No Response | 4,375 | 17.5% |
| Definitely No | 7,191 | 28.8% |
| Probably No | 6,614 | 26.5% |
| Not Sure | 3,532 | 14.2% |
| Probably Yes | 2,364 | 9.5% |
| Definitely Yes | 873 | 3.5% |
| Total Respondents | 24,949 | 0.0% |

Performance Evaluation Questions – DATCP

| DATCP - How would you rate your overall experience with the agency? | | |
|--|--------------|-------------|
| Very Good | 309 | 19.9% |
| Good | 562 | 36.2% |
| Average | 436 | 28.1% |
| Poor | 53 | 3.4% |
| Very Poor | 24 | 1.5% |
| No opinion/unsure | 169 | 10.9% |
| Total | 1,553 | 100% |
| Not Asked/No Response | 23,396 | |

| DATCP - How would you rate the licensing process? | | |
|--|--------------|-------------|
| Very Good | 228 | 15.0% |
| Good | 510 | 33.6% |
| Average | 413 | 27.2% |
| Poor | 65 | 4.3% |
| Very Poor | 17 | 1.1% |
| No opinion/unsure | 285 | 18.8% |
| Total | 1,518 | 100% |
| Not Asked/No Response | 23,431 | |

| DATCP - After submitting your application, what length of time did you wait for your license? | | |
|--|--------------|-------------|
| 3 or less business days | 202 | 16.7% |
| 4 - 7 business days | 421 | 34.9% |
| 8 - 29 business days | 468 | 38.8% |
| 30 days or longer | 115 | 9.5% |
| Total | 1,206 | 100% |
| Not Asked/No Response | 23,743 | |

| DATCP How satisfied are you with the time it takes to receive your license after you apply? | | |
|--|--------------|-------------|
| Very satisfied | 385 | 28.5% |
| Somewhat satisfied | 364 | 26.9% |
| No opinion | 449 | 33.2% |
| Somewhat dissatisfied | 100 | 7.4% |
| Very dissatisfied | 53 | 3.9% |
| Total | 1,351 | 100% |
| Not Asked/No Response | 23,598 | |

| DATCP - How much value do you believe there is relative to fees paid to be a license holder? | | |
|---|--------------|-------------|
| Good Value | 253 | 18.3% |
| Some Value | 373 | 26.9% |
| Not Sure | 367 | 26.5% |
| Minimal Value | 305 | 22.0% |
| No Value | 87 | 6.3% |
| Total | 1,385 | 100% |
| Not Asked/No Response | 23,564 | |

| DATCP - How frequently, if at all, should you be required to renew your license? | | |
|---|--------------|-------------|
| Renew more frequently | 13 | 1.0% |
| Leave as is | 805 | 59.7% |
| Renew less frequently | 427 | 31.7% |
| Do not require renewal at all | 104 | 7.7% |
| Total | 1,349 | 100% |
| Not Asked/No Response | | 23,600 |

| DATCP - What is your opinion of the continuing education requirements, if any, for your license? | | |
|---|--------------|-------------|
| Increase the CE requirement | 75 | 5.5% |
| Ok as is | 710 | 51.6% |
| No CE is required now | 184 | 13.4% |
| No opinion | 110 | 8.0% |
| Reduce the CE requirement | 161 | 11.7% |
| Do not require CE | 93 | 6.8% |
| Other | 43 | 3.1% |
| Total | 1,376 | 100% |
| Not Asked/No Response | | 23,573 |

Performance Evaluation Questions – DSPS

| DSPS - How would you rate your overall experience with the agency? | | |
|---|---------------|-------------|
| Very Good | 3,986 | 24.2% |
| Good | 6,850 | 41.6% |
| Average | 4,047 | 24.6% |
| Poor | 626 | 3.8% |
| Very Poor | 184 | 1.1% |
| No opinion/unsure | 772 | 4.7% |
| Total | 16,465 | 100% |
| Not Asked/No Response | | 8,484 |

| DSPS - How would you rate the licensing process? | | |
|---|---------------|-------------|
| Very Good | 4,320 | 26.4% |
| Good | 6,699 | 40.9% |
| Average | 4,007 | 24.5% |
| Poor | 783 | 4.8% |
| Very Poor | 188 | 1.1% |
| No opinion/unsure | 385 | 2.4% |
| Total | 16,382 | 100% |
| Not Asked/No Response | | 8,567 |

| DSPS - After submitting your application, what length of time did you wait for your license? | | |
|---|---------------|-------------|
| 3 or less business days | 3,557 | 22.8% |
| 4 - 7 business days | 4,885 | 31.3% |
| 8 - 29 business days | 5,358 | 34.3% |
| 30 days or longer | 1,830 | 11.7% |
| Total | 15,630 | 100% |
| Not Asked/No Response | 9,319 | |

| DSPS - How satisfied are you with the time it takes to receive your license after you apply? | | |
|---|---------------|-------------|
| Very satisfied | 6,489 | 40.5% |
| Somewhat satisfied | 4,154 | 26.0% |
| No opinion | 3,236 | 20.2% |
| Somewhat dissatisfied | 1,414 | 8.8% |
| Very dissatisfied | 713 | 4.5% |
| Total | 16,006 | 100% |
| Not Asked/No Response | 8,943 | |

| DSPS - How much value do you believe there is relative to fees paid to be a license holder? | | |
|--|---------------|-------------|
| Good Value | 3,790 | 23.3% |
| Some Value | 4,502 | 27.7% |
| Not Sure | 3,722 | 22.9% |
| Minimal Value | 3,516 | 21.6% |
| No Value | 726 | 4.5% |
| Total | 16,256 | 100% |
| Not Asked/No Response | 8,693 | |

| DSPS - How frequently, if at all, should you be required to renew your license? | | |
|--|---------------|-------------|
| Renew more frequently | 111 | 0.7% |
| Leave as is | 9,981 | 60.9% |
| Renew less frequently | 5,548 | 33.9% |
| Do not require renewal at all | 737 | 4.5% |
| Total | 16,377 | 100% |
| Not Asked/No Response | 8,572 | |

| DSPS - What is your opinion of the continuing education requirements, if any, for your license? | | |
|--|---------------|-------------|
| Increase the CE requirement | 864 | 5.3% |
| Ok as is | 8,844 | 53.9% |
| No CE is required now | 2,388 | 14.6% |
| No opinion | 588 | 3.6% |
| Reduce the CE requirement | 1,780 | 10.9% |
| Do not require CE | 1,131 | 6.9% |
| Other | 798 | 4.9% |
| Total | 16,393 | 100% |
| Not Asked/No Response | 8,556 | |

Appendix 6: List of Stakeholder Groups Contacted

DATCP Groups

| Number | Organization |
|--------|---|
| 1. | 211 (Badger Bay Management Co.) |
| 2. | ABS Global, Inc. |
| 3. | AgrAbility of Wisconsin |
| 4. | Alta Genetics |
| 5. | Babcock Institute |
| 6. | Bioforward |
| 7. | Bull Studs Emergency Management, Accelerated Genetics |
| 8. | Capitol Consultants, Inc. |
| 9. | Capitol Strategies |
| 10. | Center for Dairy Profitability |
| 11. | Center for Integrated Agricultural Systems (CIAS) |
| 12. | Chippewa County Economic Development Corporation |
| 13. | Concerned Auto Recyclers of WI |
| 14. | Cooperative Network Association |
| 15. | Dairy Business Assn |
| 16. | Dane County Farmers Market |
| 17. | Daybreak Foods |
| 18. | Department of Health |
| 19. | Department of Natural Resources |
| 20. | Department of Public Instruction |
| 21. | DeWitt, Ross & Stevens |
| 22. | Discover Mediaworks |
| 23. | Easter Seals Wisconsin |
| 24. | Equity Cooperative Livestock Sales Association |
| 25. | ExxonMobil Refining and Supply Company |
| 26. | FairShare CSA Coalition |
| 27. | Farley Center for Peace, Justice & Sustainability |
| 28. | Focus on energy |
| 29. | Fondy food Center |
| 30. | Food and Beverage Milwaukee |
| 31. | Food Export Association of the Midwest |
| 32. | Genex |
| 33. | Ginseng Board of Wisconsin |
| 34. | GLCI Steering Committee/NRCS |
| 35. | Gold'n Plump Poultry |
| 36. | Gorst Valley Hops |
| 37. | GrassWorks |
| 38. | Great Lakes Farm to School Network |
| 39. | Green County Beef Producers |

| | |
|-----|--|
| 40. | Growing Power |
| 41. | Growmark |
| 42. | Health First Wisconsin |
| 43. | Hmong Wisconsin Chamber of Commerce |
| 44. | Indianhead Food Service Distribution |
| 45. | Indianhead Polled Hereford Association |
| 46. | Indianhead Sheep Breeders Association |
| 47. | International Society of Weighing and Measuring |
| 48. | Jennie-O Turkey Store, Inc. |
| 49. | Kettle Moraine Mink Breeders |
| 50. | MacFarlane Pheasants, Inc. |
| 51. | Madison Area Community Supported Agriculture |
| 52. | Madison International Trade Association |
| 53. | Madison Region Economic Development Partnership |
| 54. | Marathon Petroleum |
| 55. | Master Meat Crafter Program |
| 56. | McKay Nursery |
| 57. | Michael Best & Friedrich LLP |
| 58. | Michael Fields Agriculture Institute |
| 59. | Midwest Food Processors Association |
| 60. | Midwest Grocers Association |
| 61. | Midwest Organic and Sustainable Education Service |
| 62. | Midwest Organic Services Association |
| 63. | Midwest Pickle Association |
| 64. | Midwest Pinzgauer Association |
| 65. | Milwaukee International Trade Association |
| 66. | New North, Inc. |
| 67. | NFO - Wisconsin |
| 68. | Organic Advisory Council |
| 69. | Organic Valley |
| 70. | Professional Dairy Producers of WI |
| 71. | REAP Food Group |
| 72. | Reindeer Owners & Breeders Association (R.O.B.A.) |
| 73. | SE Wisconsin Farm and Food Network |
| 74. | Sexing Technologies Inc. |
| 75. | Small Business Development Center - Milwaukee |
| 76. | Southwest Badger Resource Conservation & Development Council |
| 77. | Spring Rose Growers Cooperative |
| 78. | Syngenta |
| 79. | The Welch Group |
| 80. | Transform WI |
| 81. | U.S. Commercial Service Midwest |

| | |
|------|--|
| 82. | U.S. Small Business Administration-Madison |
| 83. | USDA Rural Development |
| 84. | UW Cooperative Extension |
| 85. | UW Extension |
| 86. | UW Extension – Emergency Management |
| 87. | UW Madison - CALS |
| 88. | UW Madison - Center for Integrated Agricultural Systems |
| 89. | UW Madison -West Madison Ag. Research Station |
| 90. | UW River Falls |
| 91. | UW Superior |
| 92. | UW-Madison Animal Science Dept. |
| 93. | UW-Madison Food Science |
| 94. | UW-River Falls Animal Science Dept. |
| 95. | WAGA, WATA, WBGA, WFGV |
| 96. | Whitetails of Wisconsin (W.O.W.) |
| 97. | WI/MN Petroleum Council |
| 98. | Wisconsin Agribusiness Council |
| 99. | Wisconsin Agricultural Tourism Association |
| 100. | Wisconsin Agri-Service Assoc. |
| 101. | Wisconsin AgroSecurity Resource Network |
| 102. | Wisconsin Airport Management Association |
| 103. | Wisconsin Angus Association |
| 104. | Wisconsin Apple Growers Association |
| 105. | Wisconsin Aquaculture Association, Inc. |
| 106. | Wisconsin Association of Fairs |
| 107. | Wisconsin Association of FFA |
| 108. | Wisconsin Association of Meat Processors |
| 109. | Wisconsin Association of Professional Agricultural Consultants |
| 110. | Wisconsin Automobile & Truck Dealers Association Inc. |
| 111. | Wisconsin Automotive Aftermarket Association |
| 112. | Wisconsin Bakers Association Inc. |
| 113. | Wisconsin Beef Council |
| 114. | Wisconsin Berry Growers Association |
| 115. | Wisconsin Cattlemen’s Assn |
| 116. | Wisconsin Cattlemen's Association |
| 117. | Wisconsin Center for Dairy Research |
| 118. | Wisconsin Cheese Makers Assn |
| 119. | Wisconsin Cherry Board |
| 120. | Wisconsin Cherry Growers Inc. |
| 121. | Wisconsin Christmas Tree Producers Association |
| 122. | Wisconsin Commercial Deer & Elk Farmers Association |
| 123. | Wisconsin Commercial Flower Growers Association |

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| 124. | Wisconsin Corn Growers Assn |
| 125. | Wisconsin Corn Promotion Board |
| 126. | Wisconsin Cranberry Board |
| 127. | Wisconsin Cranberry Growers Association |
| 128. | Wisconsin Dairy Artisan Network |
| 129. | Wisconsin Dairy Products Association |
| 130. | Wisconsin Economic Development Corporation |
| 131. | Wisconsin Emu Association |
| 132. | Wisconsin Farm Bureau Federation |
| 133. | Wisconsin Farm Service Agency |
| 134. | Wisconsin Farmers Union |
| 135. | Wisconsin Fire Chief's Association |
| 136. | Wisconsin Fire Inspectors Association |
| 137. | Wisconsin Food Hub Cooperative |
| 138. | Wisconsin Foodie |
| 139. | Wisconsin Fresh Market Vegetable Growers Association |
| 140. | Wisconsin Grape Growers Association |
| 141. | Wisconsin Grass-fed Beef Cooperative |
| 142. | Wisconsin Green Industry Federation |
| 143. | Wisconsin Grocers Association |
| 144. | Wisconsin Hereford Association |
| 145. | Wisconsin Holstein Association |
| 146. | Wisconsin Honey Producers Association |
| 147. | Wisconsin Horse Council |
| 148. | Wisconsin Innovation Kitchen |
| 149. | Wisconsin Insurance Alliance |
| 150. | Wisconsin Jersey Breeders Association |
| 151. | Wisconsin Jewelers Association |
| 152. | Wisconsin Livestock and Meat Council |
| 153. | Wisconsin Livestock Breeders Association |
| 154. | Wisconsin Local Food Network |
| 155. | Wisconsin Manufacturing Extension Partnership |
| 156. | Wisconsin Maple Syrup Producers Association |
| 157. | Wisconsin Marina Association |
| 158. | Wisconsin Milk Marketing Board, Inc. |
| 159. | Wisconsin Mint Board |
| 160. | Wisconsin Nursery Growers Association |
| 161. | Wisconsin Obesity Prevention Network |
| 162. | Wisconsin Office of Rural Health |
| 163. | Wisconsin Paper Council |
| 164. | Wisconsin Petroleum Council (WPC) |
| 165. | Wisconsin Petroleum Equipment Association |

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| 166. | Wisconsin Petroleum Equipment Contractors Association (WisPEC) |
| 167. | Wisconsin Petroleum Marketers and Convenience Store Association |
| 168. | Wisconsin Pork Association |
| 169. | Wisconsin Potato and Vegetable Growers Association |
| 170. | Wisconsin Potato Board |
| 171. | Wisconsin Potato Industry Board |
| 172. | Wisconsin Poultry & Egg Improvement Assn |
| 173. | Wisconsin Propane Gas Association |
| 174. | Wisconsin Red and White Cattle Association |
| 175. | Wisconsin Restaurant Association |
| 176. | Wisconsin Rural Partners |
| 177. | Wisconsin Rural Women's Initiative |
| 178. | Wisconsin Self-Service Laundry Association |
| 179. | Wisconsin Sheep Breeders Cooperative |
| 180. | Wisconsin Sheep Dairy Cooperative |
| 181. | Wisconsin Shorthorn Association |
| 182. | Wisconsin Show Pig Association |
| 183. | Wisconsin Simmental Association |
| 184. | Wisconsin Sod Producers Association |
| 185. | Wisconsin Soybean Association |
| 186. | Wisconsin Soybean Board |
| 187. | Wisconsin Specialty Cheese Institute |
| 187. | Wisconsin Specialty Cheese Institute |
| 188. | Wisconsin State Cranberry Growers Association |
| 189. | Wisconsin Transportation Builders Association |
| 190. | Wisconsin Utilities Association |
| 191. | Wisconsin Veterinary Medical Assoc. |
| 192. | Wisconsin Veterinary Medical Association |
| 193. | Wisconsin Winery Association |
| 194. | World Beef Expo |
| 195. | World Trade Center Wisconsin |
| 196. | WTCS Ag Education |

DSPS Groups

| Number | Organization |
|---------------|---|
| 1. | American Massage Therapy Association, WI Chapter |
| 2. | Chiropractic Society of Wisconsin |
| 3. | Funeral Service and Cremation Alliance of Wisconsin |
| 4. | International Union of Operating Engineers Local #139 |
| 5. | Iron Workers District Council of the North Central States |
| 6. | Lake State Lumber Association |

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| 7. | Leading Age Wisconsin |
| 8. | League of Wisconsin Municipalities |
| 9. | Madison Area Builders Association |
| 10. | Mechanical Contractors Association of Wisconsin |
| 11. | Medical College of Wisconsin |
| 12. | Mental Health America of Wisconsin |
| 13. | Miron Construction |
| 14. | National Association of Chain Drug Stores |
| 15. | National Association of Social Workers – WI Chapter |
| 16. | National Electrical Manufacturers Association |
| 17. | Novartis Pharmaceuticals Corporation |
| 18. | Otsuka America Pharmaceutical, Inc. |
| 19. | Pharmaceutical Research and Manufacturers of America (PhRMA) |
| 20. | Pharmacy Society of Wisconsin |
| 21. | Reckitt Benckiser Pharmaceuticals Inc |
| 22. | Southeast Dental Associates |
| 23. | Sunovion Pharmaceuticals, Inc |
| 24. | Takeda Pharmaceuticals America |
| 25. | VJS Construction Services |
| 26. | Wal-Mart |
| 27. | Wisconsin Academy of Ophthalmology |
| 28. | Wisconsin Academy of Physician Assistants |
| 29. | Wisconsin Alliance of Hearing Professionals |
| 30. | Wisconsin Amusement and Music Operators |
| 31. | Wisconsin Association for Marriage and Family Therapy |
| 32. | Wisconsin Association of Nurse Anesthetists |
| 33. | Wisconsin Association of School Nurses |
| 34. | Wisconsin Athletic Trainers Association, Inc. |
| 35. | Wisconsin Builders Association |
| 36. | Wisconsin Business Alliance |
| 37. | Wisconsin Chapter of the American Academy of Pediatrics |
| 38. | Wisconsin Chapter of the American College of Emergency Physicians, Inc. |
| 39. | Wisconsin Chiropractic Association |
| 40. | Wisconsin Dental Association |
| 41. | Wisconsin Dental Hygienists Association |

Appendix 7: Stakeholder Contact – Agriculture Sector

October 30, 2013

Mr. Andrew Hitt
Assistant Deputy Secretary
Department of Administration
P.O. Box 7864
Madison, WI. 53707-7864

We are writing to you, as representatives of farm, cooperative, commodity and agri-business organizations, to express our deep concern with certain language in the 2013-15 biennial budget Act 20 inserted by the Joint Finance Committee. As you know, this language directs the Department of Administration to study the possible consolidation of the functions performed by the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Safety and Professional Services (DSPA), into a new agency to be named the Department of Agriculture, Regulation, and Trade (DART). As you are aware, the study seeks to evaluate the consolidation of agency programs, reform licensing, and potentially eliminate advisory boards and councils.

First, we believe any potential benefits from a consolidation of the two agencies are offset by substantial concerns we have about the future integrity of DATCP and its vital role as the state's major agricultural and consumer protection advocate. Many of the functions at DSPA **do not** fit DATCP's core responsibilities in such critical areas as animal health, food safety, consumer protection, agricultural resource management, and agricultural industry partnerships. We fear consolidation could cause DATCP to drift from its agricultural advocacy and consumer protection mission because DSPA is focused on the review of nearly 50 diverse boards and councils, including the Cemetery Board, Controlled Substances Board, Crematory Authority Council, Hearing and Speech Examining Board, Perfusionists Examining Council, Midwives Advisory Committee and the Sign Language Interpreter Council, among many others. DSPA is also responsible for ensuring the safe and competent practice of licensed professionals in Wisconsin. This is a very different mission than DATCP's current agricultural and consumer protection mission.

Second, an expected purpose of the potential consolidation is to save taxpayer dollars. We are very concerned that, should a consolidation occur, the only "savings" would be from the reduction or elimination of important DATCP programs because many of its programs are still funded by state taxpayer dollars rather than by fees because they benefit the general public. By contrast, DSPA typically collects fees to run its professional licensing and oversight boards. In other words, we fear that over time, DATCP would look much more like DSPA rather than like DATCP due to expected budget cuts should consolidation occur. Please note that DATCP has already been greatly -- and disproportionately -- impacted by the loss of federal "earmarked" appropriations and state budget cuts that have resulted in the elimination or at least temporary defunding of some worthy programs.

If the study determines that the elimination of DSPA as a self-standing agency is important from a government efficiency standpoint, we are not opposed to that outcome. We realize that in DSPA's brief history, a number of functions have been transferred out of the agency, including

those initiated through 2013 Act 20. However, we believe transfers of specific regulatory programs should be strategic and logical in terms of what agencies are impacted. For example, the Auctioneer Board, Veterinary Examining Board and oversight of anhydrous ammonia tank systems may logically be attached to DATCP. However, if specific transfers such as those are recommended, we request that it not affect the function of the DATCP Board. Wisconsin agriculture and agribusiness strongly supports the continuation of the Board of Agriculture, Trade and Consumer Protection, which is populated with seven members with an agricultural background and two as consumer representatives.

We enjoy a beneficial partnership with DATCP and strongly support the agency's focus on agriculture and consumer protection. Wisconsin's \$59 billion agricultural industry is diverse and has thrived in part due to public policy initiatives that have assisted in our ability to produce food and fiber for citizens of our nation and the world. Please be advised that we would strongly oppose any recommendation that would diminish DATCP's continued ability to be our strong partner. Thank you for taking our perspective into consideration as you proceed with the study that the Legislature directed you to undertake.

Sincerely,

Cooperative Network – Bill Oemichen
1 S. Pinckney St., Suite 810, Madison, WI 53703

Dairy Business Association – Laurie Fischer
PO Box 13505, Green Bay, WI 54307-3505

GROWMARK, Inc. – Chuck Spencer
P.O. Box 2500, Bloomington, IL 61720-2500

Midwest Food Processors Association – Nick George
4600 American Pkwy., Suite 210, Madison, WI 53701-1297

Wisconsin Agri-Business Association – Tom Bressner
2801 International Lane, Suite 105, Madison, WI 53704

Wisconsin Agribusiness Council – Ferron Havens
PO Box 46100, Madison, WI 53744-6100

Wisconsin Association of Professional Agricultural Consultants – Eric Birschbach
2276 Dahlk Circle, Verona, WI 53593

Wisconsin Cattlemen's Association – Terry Quam
N706 Hwy 113, Lodi, WI 53555

Wisconsin Cheese Makers Association – John Umhoefer
8030 Excelsior Dr., Suite 305, Madison, WI 53717-1950

Wisconsin Corn Growers Association – Bob Oleson

W1360 Hwy. 106, Palmyra, WI 53156

Wisconsin Dairy Products Association – Brad Legreid
8383 Greenway Blvd., Middleton, WI 53562

Wisconsin Farm Bureau Federation – Paul Zimmerman
PO Box 5550, Madison, WI 53705

Wisconsin Farmers Union – Darin Von Ruden
117 West Spring Street, Chippewa Falls, WI 54729

Wisconsin Green Industry Federation – Brian Swingle
12342 W. Layton Ave., Greenfield, WI 53228

Wisconsin National Farmers Association – Don Hamm
955 17th St., Prairie du Sac, WI 53578

Wisconsin Pork Association – Mike Wehler
P.O. Box 327, Lancaster, WI 53813

Wisconsin Potato and Vegetable Growers Association – Duane Maatz
P.O. Box 327, Antigo, WI 54409

Wisconsin Poultry and Egg Association – Pat Stonger
533 E. Tyranena Park Rd., Lake Mills, WI 53551

Wisconsin Soybean Association – Bob Karls
2976 Triverton Pike Dr., Madison, WI 53711-5898

Wisconsin State Cranberry Growers Association – Tom Lochner
132 E. Grand Ave., Suite 202, Wisconsin Rapids, WI 54495-0365

Wisconsin Veterinary Medical Association – Kim Pokorny
2801 Crossroads Drive, Suite 1200, Madison, WI 53704

Cc: Secretary Mike Huebsch
Secretary Ben Brancel

**Appendix 8: Letter from Wisconsin Veterinary Medical Association
Representatives**



2801 Crossroads Drive
Suite 1200
Madison, WI 53718
(608) 257-3565
Fax: (608) 747-8989
wvma@wvma.org
www.wvma.org

December 3, 2013

Mr. Joe Knilans and Ms. Nancy Mistele
Wisconsin Department of Administration
Office of Business Development
101 East Wilson Street, 10th Floor
P.O. Box 7864
Madison, WI 53707-7864

VIA EMAIL and U.S. MAIL

RE: Request from the Wisconsin Veterinary Medical Association to Move the Veterinary Examining Board from
DSPS to DATCP

Dear Mr. Knilans and Ms. Mistele:

On behalf of the Board of Directors of the Wisconsin Veterinary Medical Association (WVMA), I am writing to formally request that you consider the merits of the following changes as a part of your study of the Wisconsin Department of Safety and Professional Services (DSPS):

- (1) Move the Veterinary Examining Board (VEB) from DSPS to the Department of Agriculture, Trade and Consumer Protection (DATCP);
- (2) Move the enforcement authority for unauthorized practice of veterinary medicine to DATCP (currently with the DSPS Division of Enforcement); and
- (3) The VEB to remain an independent board.

In our opinion, moving the VEB to DATCP would increase the efficiency and quality of the services available to the VEB, the public and licensed veterinarians in Wisconsin for the following reasons:

- DATCP houses the Wisconsin State Veterinarian;
- DATCP houses the state Division of Animal Health, which works to protect animal and human health, and to control serious animal diseases (many of which also threaten humans);
- DATCP houses the state Division of Food Safety, which works to ensure the production and delivery of safe food to consumers (veterinarians play a vital role in animal food production); and
- DATCP's attorneys are familiar with both animal health and consumer protection issues and will be well-suited to handling VEB support, as well as unauthorized practice enforcement issues.

We do not recommend the transfer of any staff from DSPS to DATCP. Rather, we recommend transferring the funding for staff positions and allowing the Secretary of DATCP to use that funding to compensate existing or new staff members to handle VEB support and unauthorized practice issues.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Chris Booth, DVM".

Chris Booth, DVM
President, WVMA Board of Directors

cc Kim Pokorny, Executive Director, WVMA
Jordan Lamb, DeWitt Ross & Stevens

Appendix 9: Letter from Professional Association of Wisconsin Licensed Investigators

Joe Knilans – Director
Office of Business Development
P.O. Box 7864
Madison, WI 53705-7854

Re: Private Investigator Licensing and Restructuring

Mr. Knilans:

I appreciate this opportunity to work with you on the restructuring. For the last 7 years, I have been working on the need for improvement of the professionalism for investigators in Wisconsin.

There are a surprisingly large number per capita of investigators licensed. Four times that of Minnesota, and double that of Illinois. (See the report on the surrounding states also sent to you).

The last 5 years, I have been president of the association in Wisconsin and the main focus has been on education. If a person has chosen a profession and wishes make a living with that profession, it would seem logical that they would want to be good at the job. Failing to keep up on the regulations, laws and techniques would make them less likely to make their client happy.

Our association, Professional Association Of Wisconsin Licensed Investigators, has a Professional Review Committee. This might be considered as Internal Affairs. A few times a year we receive complaints from clients about the way an investigator handled a case. This might be anything from lack of professional service to in appropriate conduct. Whatever the complaint, whether or not the accused is a member, every dissatisfied client affects the reputation of all investigators.

For those that are not members, all we can do is to refer the plaintiff to the state. If a member, we do have a certain amount of pressure we can apply to help satisfy the problem.

Out of the almost 800 licenses issued, (I believe that is the number given to me by your office), we have only 150 members. So we know that 150 of them care enough about being better that they sought out sources of knowledge, or at least thinking that being able to claim membership makes them look better in an advertisement. So that puts them ahead of the 650 who don't even do that.

During the year we have regional and one day seminars in addition to the Annual Conference lasting 2 1/2 days and covering 12 – 15 hours of training; law changes, tactics, techniques, equipment are just some of the topics presented.

We have a survey permanently active on the website for the membership to let us know what they want to learn. We have an email group handling 10 – 20 emails a day exchanging ideas and answering questions about an aspect of a case.

So, from the 800 we are down to 150 who find advantages in joining PAWLI. Now, the next step is the number who actually attend conferences. That reduces it to a little less than 100. So we have 100 licensed investigators in the state who actively care about being good at their job. That means that 700 don't think they need to learn anything, or just don't care

Just one example of the problems we face. And the answer is reducing the number of persons gaining a license with little to no desire to do the job well

Bureau Of Technical Services

PO Box 191 Chippewa Falls, WI 54729
715-726-1400

Bureau of Technical Services
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tsit@tacticalsurveillance.com

Knight Hawk Investigations
khi@tacticalsurveillance.com

So the first question is, "how easy is it to get a license?"

There are no requirements. Pass a test and buy insurance. Think of professional investigators being the same as police. We handle all the same cases, criminal defense, family law, insurance fraud, corporate white collar and the security agent handles the equivalent of the patrol officer. It takes an associate degree in Criminal Justice to be eligible to be hired by the police department.

Minnesota and Illinois require thousands of hours of training in the job before they can get their own license. They also require continuing education credits.

So what can be done to help fix the problem?

In the past, my conversations with the state have boiled down to one obstacle in mandatory CEUs. The state cannot dedicate the funds required to monitor training. Funds are hard to come by, I get that. So I have spent the last three years creating the answer.

The PAWLI website has been designed to keep track of CEUs. Every person who attends a class, no matter from where or who, if pertinent and accredited, they get the units documented. For right now, it is working for all members in the database. And the database does not have a limit of how many can be recorded. The programming keeps track of the topic the date and number of credits received. One year from the date received, the credit automatically drops. (this can be changed to any interval future regulation might require). And when needed, the individual logs in and prints out a certificate as needed for proof of attendance.

This is good for members, but what about everyone else?

The site was designed for handling members and non-members. The only difference is the rest of the benefits of being a member are not available to non-members but they would still have the credits documented and certificates available.

So how do we keep track of who attends what?

A couple years ago, I presented the state with a proposition on a credential for investigators that would be more formal and professional than the coupon issued by the state. To review the conversations, the barber or tattoo artist would rarely have to pull the license out of the wallet to get the job done. But an investigator does this daily. It is the proof on the street that they are a professional doing their job and the piece of paper just does not even look real.

The result is a design for an ID that officially is a PAWLI membership card. A picture ID that is laminated plastic with hologram security, listing the name, license number and agency. More to the point at this time, it also has a RFID chip in the card. PAWLI is in the process of implementing another design feature of the website. Keeping track of who attended what.

Let's say that 750 people are attending the annual conference. The schedule is programmed in so the computer knows what is being presented at what time. As the person walks in, they are scanned and documented for being present without even removing their wallet. If they turn around and leave, it documents that also. At the end of the day, a person could log into the database and see the credits accumulated on that day already credited.

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So, you see, PAWLI has provided the answer to keeping track. It is not a proposal for something that can be done. It is up and working. PAWLI can provide IDs for the non-members as well so they will be able to take advantage of the technology, but it is also a better answer that the state issue similar ID cards as credentials to all investigators and security agents so the additional card is not necessary.

All of this helps the professionalism in two ways:

1. If a licensee is required to keep up with the changes in the profession like a considerable number of other Wisconsin professions with far less impact on the security of the citizen, then those who do not wish to participate will not be allowed to have a license.
2. Those who feel that being good at their job is worth the effort in training will then have raised the level of professionalism. Which was the goal in the first place.

The additional topic of concern was the transfer of regulation from DSPS to Agriculture. Not sure why Agriculture other than maybe there is some correlation of process.

I suggested in our short phone conversation that I would like to see the Investigators and Security under the Attorney General. As mentioned above, the job is very similar to the law enforcement. We work the same jobs, we testify in court, process and present evidence and many other points of similarity.

I am not suggesting that the requirements for obtaining an investigators license be the same as law enforcement. That high of standard is nice but not practical. But positioning this profession under the division that understands the requirements of the job, allows for future developments to be more easily implemented. Much like Minnesota's PIs under the Bureau of Criminal Apprehension.

Again, I appreciate the opportunity to present my ideas. I am anxious to work with you, finding a way to make changes that improve the professionalism. I am available for any committee. As the president of PAWLI it is my proud job to represent the profession in this state and I look forward to future discussions.

James Greenwold
President – PAWLI

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Illinois Requirements

Illinois Requirements Licensing of Private Investigators And Proprietary Security Force

Illinois has a different license for Security and Investigator As of October of 2013 , there are 1091 investigators and 560 security personnel. There is also an agency license for each of those.



Applicant is the Licensee in charge. Structured under Sole Proprietor, Partnership or Corporation..

Additionally, there is a Permanent Employee Registration Card (PERC) that can be held by employees of an agency for which there has to be at least one full license holder.

Investigators can carry fire arms after 40 hours of training. There are no restrictions as to where you can carry. Every 2 years the investigator has to re-qualify with a formal test.



An examination is necessarily passed by 70% or greater to qualify. The passing score is valid for 6 years at which time it becomes void. Then the applicant needs to reapply with the full process.

In January, IL will be enacting their citizen carry permit. It is still not decided if this permit will replace the current or if it will have restrictions that the current one does not.

The license is for 3 years. There is a \$500 initial fee and then \$450 for each renewal. The Agency license is approximately the same price and duration.

The PERC card is \$55 and a \$45 renewal fee every year.

All holders have the same renewal date, May 31st.

Liability insurance is mandatory. There is no bond required.

Some one with a PERC card has to acquire 3 years experience out of the last 5 years before applying for a PI license.

Illinois PI Requirements Private Detective Licensure Exam Information

Experience / Education Documentation

Fees are charged for the process of applying.
Firearms control card \$75 and a renewal fee of \$45.
Proprietary Security Force fee is \$300 and the renewal is \$200.
Firearm instructor application fee is \$75 with a renewal of \$45.
A 40 hour Firearm Training Course has a \$100 application fee.

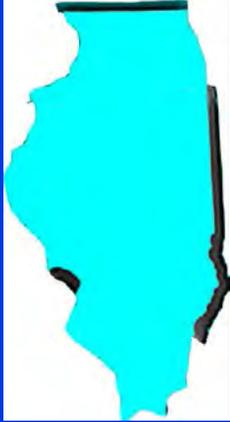
Fingerprints from vendor licensed by Illinois for background

Regulations for Investigators and Security are listed in the Public Acts

If you want to download the Public Act in its entirety there is a PDF available.

All applicants should review the changes to the Public Act.

Licensure by endorsement is no longer available. Everyone has to take and pass exam.



Illinois Requirements

SUBPART A: PRIVATE DETECTIVE

Section 1240.10 Application for Examination and Licensure – Private Detective
Section 1240.20 Application for Licensure – Private Detective Agency

SUBPART B: PRIVATE ALARM

Section 1240.100 Application for Examination and Licensure – Private Alarm Contractor
Section 1240.110 Application for Licensure – Private Alarm Contractor Agency

SUBPART C: PRIVATE SECURITY

Section 1240.200 Application for Examination and Licensure – Private Security Contractor
Section 1240.210 Application for Licensure – Private Security Contractor Agency

SUBPART D: LOCKSMITH

Section 1240.300 Application for Examination and Licensure – Locksmith
Section 1240.310 20 Hour Basic Training Course – Locksmith
Section 1240.320 Record keeping Requirements – Locksmith (Repealed)
Section 1240.330 Application for Licensure – Locksmith Agency

SUBPART E: PROPRIETARY SECURITY FORCE

Section 1240.400 Registration of Proprietary Security Force

SUBPART F: GENERAL

Section 1240.500 Definitions
Section 1240.501 Licensee-in-charge
Section 1240.502 Application for Branch Office License
Section 1240.505 20-Hour Basic Training Course – Private Detective, Alarm Contractor, Security
Section 1240.510 Firearm Training Course
Section 1240.515 Approval of Firearm Training Programs and Firearm Instructors
Section 1240.520 Permanent Employee Registration Card
Section 1240.525 Refusal to Issue Registration Card or FCC Due to Criminal Record Information
Section 1240.530 Firearm Control Cards
Section 1240.535 Record-keeper Requirements
Section 1240.540 Reporting Requirements
Section 1240.550 Renewals
Section 1240.555 Endorsement
Section 1240.560 Restoration
Section 1240.561 Inactive Status
Section 1240.565 Requests for Duplicate Certificates
Section 1240.570 Fees
Section 1240.575 Conduct of Hearings
Section 1240.580 Investigation by the Division
Section 1240.585 Granting Variances

SUBPART G: FINGERPRINT VENDOR

Section 1240.600 Application for Licensure – Fingerprint Vendor
Section 1240.610 Licensure - Fingerprint Vendor Agency
Section 1240.620 Fingerprint Vendor – Standards, Unethical, Unauthorized, Conduct
Section 1240.630 Fingerprint Vendor – Training

SUBPART H: CANINE HANDLER

Section 1240.700 Canine Handler Training Course Requirements
Section 1240.710 Canine Handler Authorization Card
Section 1240.720 Canine Handler Training Program
Section 1240.730 Canine Trainer Authorization Card
Section 1240.740 Canine Handler and Canine Training Instructor – Unprofessional Conduct



Minnesota Requirements

Minnesota Investigator and Protective Agents Application Procedures

The division of "types" of license holders are divided into:

Individual - which is listed as a sole proprietor

- A person with a corporation related to the business can not claim sole proprietorship.

Partnership or Corporation.

- A "Qualified Representative managing the day to day business is the license holder.
- A Minnesota Manager is the holder if the business is based out side of MN.

Insurance policy for applicant alone @ \$10,000 to 51 employees @ \$100,000.

A Surety Bond of \$10,000 at the time of application.

Mandatory employment experience.

Document 6,000 hrs of investigative experience in 1 or more of:

Private Investigator

- As an investigator with a licensed agency
- U.S. Government
- Police department
- Other experience that the board would deem relevant.

A protective agent has the same requirements just replace investigator with PA. Additionally, PA requires experience in security systems, audits, and supervisor of other security personnel.

There are 211 private investigators and 100 security agents licensed in the state.

Fees for investigators:

- Individual \$1000
- Partnership LLP \$1700
- Corporation LLC \$1900

Director is trying to change 0-1 person \$540 PI license

Fees for Protective Agents:

- Individual \$1,000
- Partnership LLP \$1,700
- Corporation LLC \$1,900

No test is taken

Experience package is submitted to board and, upon successful evaluation, board grants license.

Preliminary training of 12 hours before field operations

Mandatory CEUs 12 hr / 2 years

12 additional hours / 2 yr for firearm training if applicable.

Director Greg Cook is working on a statute to make unlicensed activity a felony. Now just the now \$35 fine.

No ID for carry is issued by state, however the individual is allowed to purchase an ID from an outside vendor.



Minnesota Requirements

Minnesota Department of Safety

General Licensing Information

Application and Requirements

To request an application packet, send a \$25 check or money order.

License Holders

Private Detective License Holders Protective Agent License Holders

Fees

Fee Schedule

Minnesota Administrative Rules

General

- 7506.0100 Definitions.
- 7506.0110 Internal procedures.
- 7506.0120 [Repealed, 22 sr 711]
- 7506.0130 Licensing and qualification.
- 7506.0140 Fees.
- 7506.0150 Conduct and ethics.
- 7506.0160 Complaint procedures.
- 7506.0170 Penalties.
- 7506.0180 License reinstatement.

Certified training programs

- 7506.2200 Board certification of training programs.
- 7506.2300 Minimum req for board-certified training programs.
- 7506.2500 Revocation or suspension of certification status.
- 7506.2600 Preassignment or on-the-job training requirements.
- 7506.2700 Continuing education requirements.
- 7506.2900 Failure to satisfy training requirements.



Minnesota Requirements

Statutes For Private Detective and Protective Agent Services

Definitions MNS§326.32

Employees of license holders MNS§326.336

- Background check
- ID card
- Failure to return property
- Confidentiality

Training MNS§326.3361

- Rules
- Required content
- Use of weapons
- Full-time peace officers

Persons as Private Detectives or Protective Agents MNS§326.338

- Private Detective
- Protective Agent

Exemptions MNS§326.3341

Licenses MNS§326.3381

- Prohibition
- Application procedures
- Disqualification
- Business entry applicant
- Nonresident applicant

Application for license MNS§326.3382

- Application form
- Documents accompanying application
- Proof of insurance (Bond and proof of financial responsibility)
- License disqualification
- Special protective agent classification

License Re issuance MNS§326.3383

- Requirements
- Appearance
- Bond and proof of financial responsibility

Prohibited Acts MNS§326.3384

- Prohibition
- Penalty

Conditions of Licensing MNS§326.3385

- Notice of address change
- Notice of successor
- Surrender of license
- Penalty

Fees MNS§326.3386

Disciplinary Action MNS§326.3387

Administrative Penalties MNS§326.3388

Licenses Nontransferable MNS§326.3389

Violations; Penalty MNS§326.339

Iowa Regulations



Iowa Requirements Private Investigators and Security Agents

Iowa requires a license to operate in the state. The license packets are available for \$15 by mail or \$10 at the door.

Employees of an agency are to obtain an employee ID card and must meet the same standards as the license holder.

Iowa does have mandatory CEUs of 12 hours accumulated during a 2 year period or the license will not be renewed. Credits gained from other states are transferrable. 50 minutes minimum equal 1 hour. 100 minutes equal 2 hours. 99 minutes equal 1 hour.

A program qualifies if:

- Outline is prepared in advance
- Lasts at least 50 minutes
- Is presented by a qualified instructor, background and experience documented.
- A record of attendance is maintained.

There is no examination process to obtain a license.

Most current count is 255 investigators and 120 security.

A 2 year license is issued at a cost of \$100 and an ID card cost is \$10. Fingerprinting and background check is \$30.

The ID card is issued with the name of an agency. So working for more than one agency, (which is permitted), would require more than one ID card. You have to carry the ID all the time you are working. Failure can result in suspension. The card belongs to the state. For what ever reason you are no longer in business, the card is to be surrendered.



Renewal of the license has to be applied for with 2 new fingerprint cards., 30 days before the expiration. If received after expiration of the license, apparently the state wants you to start over again.

Iowa offers reciprocity with other states that have similar requirements. A temporary permit is issued for a period of 90 days. But to note, the cost of the 90 day permit is the same as a 2 year license.

Iowa does require insurance in the name of the agency on the application.

Iowa does require a bond of \$5000 issues by a bond company licensed to work in Iowa. If more than one service, i.e.: Detective and Security, the bond is bumped up to \$10,000.

Uniforms, badges hats, and patches are not permitted without written approval from the commissioner.

Written reports have to be submitted to every client unless a signed waiver is possessed. Reports are to kept for at least 3 years.

Carrying a weapon while working must meet Iowa Admin code 661 chapter 4.

Application Packet Check List

Iowa Code 80A

Administrative Rules



Indiana Requirements Private Investigators and Security Agents

Indiana has a few things in common with states listed above and a couple things that are unique. The requirements are mostly historical:

- Requires at least 4,000 hours of experience. (2 years full time employ.)
- Background check back 7 years, state, local and fed.
- Errors and Omission liability insurance of \$100,000
- Academic transcripts for those who have a cert in criminal justice
- DD 214 from military service
- Corporate filing paper work for those who are not sole proprietors.

Application fee is \$300. \$150 if the expiration date is less than one year from application. Renewal is the same \$300. Late fee of \$50 and an additional \$10 for a wall or packet card.

Unless you spend the \$10 for the certificate, there is no personal carry license unless you make your own. The same rules apply as others, no seals or words that imply state agency affiliation.

Application

License expires every 4 years on October 1st. (Next is 2015.)

The license holder in an agency is licensed but the employees are not. It is the responsibility of the agency to regulate the activities of the employees.

There is 488 agencies licensed as investigators and 381 as security.

The state requires no test nor CEUs.

An out of state agency no longer needs to keep an office within the borders.

A licensee shall maintain a record, relative to the licensee's employees, containing the following information:

- A picture taken within thirty (30) days of the date that the employee commences employment with the licensee.
- A full set of fingerprints of both hands of the employee.
- A licensed private investigator firm shall, at the board's request, provide the board with a roster of all unlicensed individuals employed by the private investigator firm.

The link below will give you the long version if you want all the details.

Licensure Law and Regulations



Michigan Requirements

Michigan Regulations Private Investigators and Security Agents.

In Michigan the age of licensure is 25, must have a GED or better. As with all, no felonies but then carries it further than most by adding no misdemeanors involving dishonesty, fraud, (which is redundant), controlled substances, 2 or more alcohol related offenses, or carrying a firearm, impersonating a LEO or divulge information or evidence.

If currently law enforcement, must have written permission from their boss.

Must have 3 years experience to get a license.

There is no exam for the license nor CEUs required.

A new twist is 5 notarized Personal Reference Forms from individuals that can attest to you being a good and honest person.

The application fee is \$150 and an initial fee of \$600.

A bond is required for \$10,000 or

Insurance is required for, (a little more detailed):

- \$10,000 Property Damage
- \$100,000 Injury or death
- \$200,000 If more than one person involved

Fees are \$750 for everyone, no matter what business status. But the paperwork for the corporate and partnership is a little more work than the sole proprietor.

The license is valid for 3 years. Beyond the “hang on the wall” certificate, Michigan does issue a picture ID that must be carried by each licensed individual. The license is issued to the sole proprietor, partners or corporate members.

Other investigators on staff would not have an ID issued by the state but can have one from a vendor that meets the criteria of, no state seals or wording that sounds like state issue.

The recent count is 580 PIs and 277 Security Agents.

The Director of the State Department has to report the count of licenses accepted or denied by December 1st.

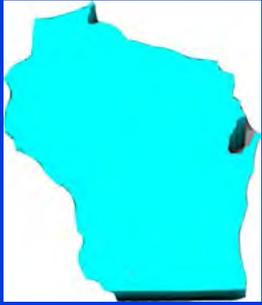
Application forms



Michigan Requirements

Michigan Requirements Professional Investigator Licensure Act

| | |
|-----------------|---|
| Section 338.821 | Section Short title. |
| Section 338.822 | Section Definitions. |
| Section 338.823 | Section License required; investigation of prohibited activities; civil or criminal action; violation; penalty. |
| Section 338.824 | Section Exemptions from act. |
| Section 338.825 | Section License; issuance, duration. |
| Section 338.826 | Section License; qualifications; reciprocal agreements. |
| Section 338.827 | Section Application for license; notarized statement as to qualifications investigation of applicant. |
| Section 338.828 | Section Application for license by corporation; contents; copy of incorporation certificate. |
| Section 338.829 | Section License; conditions of issuance; fee; duration; suspension or revocation; bonds; filing completed application; issuance of license within certain time period; report; "completed application" defined. |
| Section 338.830 | Section License; suspension or revocation; grounds; surrendering license and identification card; noncompliance as misdemeanor. |
| Section 338.831 | Section License fee; refund; conditions. |
| Section 338.832 | Section License; posting. |
| Section 338.833 | Section Reporting name or location change in agency; new license. |
| Section 338.834 | Section Identification card; issuance; form and contents; maintenance, custody, and control; duplicates. |
| Section 338.835 | Section Non assignability of license. |
| Section 338.836 | Section Display of unauthorized badge, shield, identification card, or license; violation; penalties. |
| Section 338.837 | Section Licensees; employment of assistants; records; false state ments; fingerprints. |
| Section 338.838 | Section Hiring of person convicted of certain felonies or misdemeanors prohibited; refusal to surrender license or identification card. |
| Section 338.839 | Section Carrying deadly weapon; license required. |
| Section 338.840 | Section Divulging of information; willful sale of or furnishing false infor mation; penalty; privileged communications; notice and hearing. |
| Section 338.841 | Section Violation of act; report of conviction by prosecuting attorney. |
| Section 338.842 | Section Advertising; contents; misleading advertising; notice. |
| Section 338.843 | Section Trade names; approval by department. |
| Section 338.844 | Section Record of business transaction and reports; retention. |
| Section 338.845 | Section Investigation of applicants; complaints; subpoenas; fees; fail ure to obey; penalty; testimony under oath. |
| Section 338.846 | Section License; renewal; fee; bond. |
| Section 338.847 | Section Death of licensee; carrying on business; notice to department; sale of business. |
| Section 338.848 | Section Employment of agents; rules. |
| Section 338.849 | Section Application of act as to license applications and renewals. |
| Section 338.850 | Section Repeals. |
| Section 338.851 | Section Violation; penalty. |



Wisconsin Requirements

Wisconsin Requirements Professional Investigators and Security Agents

Last but not least is our state. Most will have known enough to get you through the test in the first place. And some will have learned a little more along the way. Wisconsin does not have continuing education, so it is possible that picking up things along the way might take longer than desired.

Of course PAWLI has come to the rescue for those who want to know more than the minimum: Check out the info on the upcoming conference.

Most of the following, everyone who is reading this, knows because you have already done it. But there are those searching the information so I have to fill in the blanks.

Now, the part that takes all the information from the other states and compares that data to what Wisconsin requires.

As with the other states, if you are going to advertise and do the work of an investigator, you need a license. The exceptions are:

- If you work for one law firm only
- An off duty LEO with written permission from the boss.

Can't have "no stinking badges".

Unlike most of the others, "Don't need no experience."

Pass a fingerprint background and a written test.

The test is 100 questions covering Wis Statutes and administrative codes relevant to PIs. The Statutes are linked below and the codes link given came up with a "no page". Went to the page with all the professional codes and the PIs were not listed. So the best I can find are search results covering some interesting things.

No felonies without a pardon

Can have misdemeanor under departments discretion.

Unlike most that require an agency and then a few hours to get to work, Wisconsin requires you to get a license personally. Then work for a licensed agency.

The full 118 pages of statutes are in a PDF.

But what pertains is found at 440.26 Subchapter II

For those of you working on or helping others, I'll toss in the forms.

And the instructions for the packet.

Renewal Fee is \$115 both PIs and Security and \$107 for agencies.

Last is insurance, requiring general liability or, (get this) a \$2000 bond.

No exacting numbers are known for the licensee count, but it is some where around 750.

Epilog

It is no secret that I have continued the effort of presidential predecessors by lobbying for CEUs. If you have made it through this article you have read about how some states have higher requirements in some things and less in others. I, for one, and I know that all the investigators who show up for the conference agree, that Wisconsin Professional Investigators should want to be the best they can be in their profession, not just get by on the minimum or the average. And those who are just doing what they are required to do, really do harm the reputation of the rest of us. Please go to your "profile" on the PAWLI site and fill out the survey. It has a few more questions just for this occasion. A couple minutes to advance our profession.

James Greenwold
President PAWLI

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

AGENDA REQUEST FORM

| | | | |
|--|---|---|--|
| 1) Name and Title of Person Submitting the Request: Daniel Agne, Bureau Assistant on behalf of Tom Ryan, Executive Director | | 2) Date When Request Submitted: 01/02/14 | |
| | | Items will be considered late if submitted after 4:30 p.m. on the deadline date: <ul style="list-style-type: none"> ▪ 8 business days before the meeting for paperless boards ▪ 14 business days before the meeting for all others | |
| 3) Name of Board, Committee, Council, Sections: Medical Examining Board | | | |
| 4) Meeting Date: 1/15/14 | 5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | 6) How should the item be titled on the agenda page? Administrative Matters - Election of Officers - Appointment of Liaisons | |
| 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: The Board will elect officers and appoint liaisons. | | | |
| 11) Authorization | | | |
| Daniel Agne | | | |
| 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. | | | |

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

AGENDA REQUEST FORM

| | | | |
|--|---|---|--|
| 1) Name and Title of Person Submitting the Request: Ashley Horton Department Monitor Division of Legal Services and Compliance | | 2) Date When Request Submitted: December 20, 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: | | | |
| 4) Meeting Date: | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? Monitoring: Appointment of Monitoring Liaison and Delegated Authority Motion | |
| 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: 1. Appointment of 2014 Monitoring Liaison 2. Delegated Authority Motion: <i>“_____ moved, seconded by _____ to adopt/reject the Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor document as presented in today’s agenda packet.”</i> | | | |
| 11) Authorization <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;">  </div> <div style="width: 30%; text-align: center;"> December 20, 2013 </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Signature of person making this request</div> <div style="width: 20%; text-align: center;">Date</div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Supervisor (if required)</div> <div style="width: 20%; text-align: center;">Date</div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Executive Director signature (indicates approval to add post agenda deadline item to agenda)</div> <div style="width: 20%; text-align: center;">Date</div> </div> | | | |
| 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. | | | |

Roles and Authorities Delegated to the Monitoring Liaison and Department Monitor

The Monitoring Liaison is a board designee who works with department monitors to enforce the Board's orders as explained below.

Current Authorities Delegated to the Monitoring Liaison

The Liaison may take the following actions on behalf of the Board:

1. Grant a temporary reduction in random drug screen frequency upon Respondent's request if he/she is unemployed and is otherwise compliant with Board order. The Department Monitor will draft an order and sign on behalf of the Liaison. The temporary reduction will be in effect until Respondent secures employment in the profession.
2. Grant a stay of suspension if Respondent is eligible per the Board order. The Department Monitor will draft an order and sign on behalf of the Liaison.
3. Remove the stay of suspension if there are repeated violations or a substantial violation of the Board order. The Department Monitor will draft an order and sign on behalf of the Liaison.
4. Grant or deny approval when Respondent proposes continuing/remedial education courses, treatment providers, mentors, supervisors, change of employment, etc. unless the order specifically requires full-Board approval. The Department Monitor will notify Respondent of the Liaison's decision.
5. Grant a maximum 90-day extension, if warranted and requested in writing by Respondent, to complete Board-ordered CE, pay proceeding costs, and/or pay forfeitures upon Respondent's request.

Current Authorities Delegated to the Department Monitor

The Department Monitor may take the following actions on behalf of the Board, draft an order and sign:

1. Grant full reinstatement of licensure if CE is the sole condition of the limitation and Respondent has submitted the required proof of completion for approved courses.
2. Suspend the license if Respondent has not completed Board-ordered CE and/or paid costs and forfeitures within the time specified by the Board order. The Department Monitor may remove the suspension and issue an order when proof completion and/or payment have been received.

Clarification

1. In conjunction with removal of any stay of suspension, the Liaison may prohibit Respondent from seeking reinstatement of the stay for a specified period of time. (This is consistent with current practice.)

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

AGENDA REQUEST FORM

| | | | | | | | | | | | | | | | | | | | |
|---|--|--|-------------------|------------|--|---------------|-------------------|---|--|------|--|--------------------------|--|------|--|--|--|------|--|
| 1) Name and Title of Person Submitting the Request: Ashley Horton Department Monitor Division of Legal Services and Compliance | | 2) Date When Request Submitted: December 20, 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: | | | | | | | | | | | | | | | | | | | |
| 4) Meeting Date: | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? Appointment of Professional Assistance Procedure (PAP) Liaison | | | | | | | | | | | | | | | | | |
| 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: Appointment of 2014 PAP Liaison - see <i>Wis. Admin. Code SPS ch. 7, attached, for Liaison duties</i> | | | | | | | | | | | | | | | | | | | |
| <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; vertical-align: top;">11)</td> <td style="width: 60%; text-align: center; vertical-align: middle;"> </td> <td style="width: 15%; text-align: center; vertical-align: middle;">Authorization</td> <td style="width: 15%; text-align: center; vertical-align: middle;">December 20, 2013</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black; border-bottom: 1px solid black;">Signature of person making this request</td> <td colspan="2" style="border-top: 1px solid black; border-bottom: 1px solid black;">Date</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black; border-bottom: 1px solid black;">Supervisor (if required)</td> <td colspan="2" style="border-top: 1px solid black; border-bottom: 1px solid black;">Date</td> </tr> <tr> <td colspan="2" style="border-top: 1px solid black; border-bottom: 1px solid black;">Executive Director signature (indicates approval to add post agenda deadline item to agenda)</td> <td colspan="2" style="border-top: 1px solid black; border-bottom: 1px solid black;">Date</td> </tr> </table> | | | | 11) | | Authorization | December 20, 2013 | 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 | |
| 11) | | Authorization | December 20, 2013 | | | | | | | | | | | | | | | | |
| 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 | | | | | | | | | | | | | | | | | |
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Chapter SPS 7

PROFESSIONAL ASSISTANCE PROCEDURE

| | | | |
|----------|--|----------|--|
| SPS 7.01 | Authority and intent. | SPS 7.07 | Intradepartmental referral. |
| SPS 7.02 | Definitions. | SPS 7.08 | Records. |
| SPS 7.03 | Referral to and eligibility for the procedure. | SPS 7.09 | Report. |
| SPS 7.04 | Requirements for participation. | SPS 7.10 | Applicability of procedures to direct licensing by the department. |
| SPS 7.05 | Agreement for participation. | SPS 7.11 | Approval of drug testing programs. |
| SPS 7.06 | Standards for approval of treatment facilities or individual therapists. | | |

Note: Chapter RL 7 was renumbered chapter SPS 7 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671

SPS 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 15.30, 146.82, 227.11 and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs by promoting early identification of chemically dependent professionals and encouraging rehabilitation. This goal will be advanced by providing an option that may be used in conjunction with the formal disciplinary process for qualified credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or whose ability to practice is impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It may be used in conjunction with the formal disciplinary process in situations where allegations exist that a credential holder has committed misconduct, negligence or violations of law, other than practice while impaired by alcohol or other drugs. The procedure may then be utilized to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts to address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board members to share professional expertise so that all boards in the department have access to a range of professional expertise to handle problems involving impaired professionals.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. (2), Register, July, 1996, No. 487, eff. 8-1-96; CR 10-081: am. (2) Register December 2010 No. 660, eff. 1-1-11.

SPS 7.02 Definitions. In this chapter:

(1) "Board" means any board, examining board or affiliated credentialing board attached to the department.

(2) "Board liaison" means the board member designated by the board or the secretary or the secretary's designee as responsible for approving credential holders for the professional assistance procedure under s. SPS 7.03, for monitoring compliance with the requirements for participation under s. SPS 7.04, and for performing other responsibilities delegated to the board liaison under these rules.

(2a) "Coordinator" means a department employee who coordinates the professional assistance procedure.

(2b) "Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board. For purposes of this chapter, "credential holder" includes a person with a pending application for a credential for a period not to exceed one year from the date the application for the credential was submitted to the department.

(3) "Department" means the department of safety and professional services.

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a credential holder or which alleges facts, which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who is a licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with an individual's medical history and any other relevant biomedical information.

(7) "Procedure" means the professional assistance procedure.

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. (1), (2), (5), cr. (2a), (2b), r. (6), Register, July, 1996, No. 487, eff. 8-1-96; cr. (6) and (8), Register, January, 2001, No. 541, eff. 2-1-01; CR 10-081: am. (1) to (2b), (7) Register December 2010 No. 660, eff. 1-1-11; correction in (2), (3) made under s. 13.92 (4) (b) 6., 7., Register November 2011 No. 671.

SPS 7.03 Referral to and eligibility for the procedure. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for determination of acceptance into the procedure.

(2) A credential holder who has been referred to the procedure and considered for eligibility shall be provided with an application for participation.

(3) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to s. SPS 2.035. After investigation, informal complaints involving impairment may be referred to the procedure along with a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. SPS 7.05 (1) (a) and considered for eligibility for the procedure or for formal disciplinary proceedings under ch. SPS 2. The credential holder shall be provided with a written explanation of the credential holder's options for resolution of the matter through participation in the procedure and of the formal disciplinary process pursuant to ch. SPS 2.

(4) Eligibility for the procedure shall be determined by the board liaison and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by the coordinator in consultation with the disciplinary authority. The decision on eligibility shall be consistent with the purposes of these procedures as described in s. SPS 7.01 (2). Credential holders who have committed violations of law may be eligible for the procedure. The board liaison shall have

responsibility to make the determination of eligibility for the procedure.

(5) The credential holder shall obtain a comprehensive assessment for chemical dependency from a treatment facility or individual therapist approved under s. [SPS 7.06](#). The credential holder shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison or coordinator. The board liaison and the credential holder may agree to waive this requirement. The obtaining of the assessment shall not delay admission into the procedure.

(6) If a credential holder is determined to be ineligible for the procedure, the credential holder may be referred to the division for prosecution.

(7) A credential holder determined to be ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. (2) to (6), Register, July, 1996, No. 487, eff. 8-1-96; CR 10-081: renum. (1) and (3) to (6) to be (3) to (7) and am. (3) to (6), cr. (1), am. (2) Register December 2010 No. 660, eff. 1-1-11; correction in (3), (4), (5) made under s. [13.92 \(4\) \(b\) 7., Stats., Register November 2011 No. 671.](#)

SPS 7.04 Requirements for participation. (1) A credential holder who participates in the procedure shall:

- (a) Sign an agreement for participation under s. [SPS 7.05](#).
- (b) Remain free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose.
- (c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. [SPS 7.06](#).
- (d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison or department.
- (e) Submit random monitored physiological specimens for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under s. [SPS 7.11](#), as required.
- (f) Execute releases valid under state and federal law to allow access to the credential holder's counseling, treatment and monitoring records.
- (g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.
- (h) Notify the coordinator of any changes in the credential holder's employer within 5 days.
- (i) File quarterly reports documenting the credential holder's attendance at meetings of self-help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison or department determines, based on consultation with the person authorized to provide treatment to the credential holder or monitor the credential holder's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a credential holder participating in the procedure has failed to meet any of the requirements set under sub. (1), the board liaison may refer the credential holder to the division. A failure to maintain abstinence is considered a relapse and shall be reviewed by the board liaison to determine whether the credential holder should be referred to the division. The board liaison may review the complete record in making this determination.

(3) If a credential holder violates the agreement and no referral to the division occurs, then a new admission under s. [SPS 7.05 \(1\) \(a\)](#) shall be obtained for relapses and for misconduct, negligence or violations of law which are substantial. If a new admission is not obtained, then a referral to the division by the coordinator shall occur.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. Register, July, 1996, No. 487, eff. 8-1-96; am. (1) (e), Register, January, 2001, No. 541, eff. 2-1-01; CR 10-081: am. (1) (e), (f), (2), (3) Register December 2010 No. 660, eff. 1-1-11;

correction in (1) (a), (c), (e), (3) made under s. [13.92 \(4\) \(b\) 7., Stats., Register November 2011 No. 671.](#)

SPS 7.05 Agreement for participation. (1) The agreement for participation in the procedure shall at a minimum include:

(a) A statement describing conduct the credential holder agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. [SPS 2](#).

(b) An acknowledgement by the credential holder of the need for treatment for chemical dependency;

(c) An agreement to participate at the credential holder's expense in an approved treatment regimen.

(d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under s. [SPS 7.11](#) at the credential holder's expense, if deemed necessary by the board liaison.

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board liaison.

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

(g) An agreement to authorize the board liaison or coordinator to release information described in pars. (a), (c) and (e), the fact that a credential holder has been dismissed under s. [SPS 7.07 \(3\) \(a\)](#) or violated terms of the agreement in s. [SPS 7.04 \(1\) \(b\) to \(e\)](#) and (h) concerning the credential holder's participation in the procedure to the employer, therapist or treatment facility identified by the credential holder and an agreement to authorize the coordinator to release the results of random monitored drug screens under par. (d) to the therapist identified by the credential holder.

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board liaison may include additional requirements for an individual credential holder, if the circumstances of the informal complaint or the credential holder's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of confidentiality that all or certain records shall remain closed and not available for public inspection and copying. Any promise is subject to s. [SPS 7.08](#) and ends upon a referral to the division. Information and records may be made available to staff within the department on an as-needed basis, to be determined by the coordinator.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. (1) (a) to (g) and (2), Register, July, 1996, No. 487, eff. 8-1-96; am. (1) (d), Register, January, 2001, No. 541, eff. 2-1-01; CR 10-081: am. (3) Register December 2010 No. 660, eff. 1-1-11; correction in (1) (a), (d), (g), (3) made under s. [13.92 \(4\) \(b\) 7., Stats., Register November 2011 No. 671.](#)

SPS 7.06 Standards for approval of treatment facilities or individual therapists. (1) The board or board liaison shall approve a treatment facility designated by a credential holder for the purpose of participation in the procedure if:

(a) The facility is certified by appropriate national or state certification agencies.

(b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems.

(c) Facility treatment plans and protocols are available to the board liaison and coordinator.

(d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(2) As an alternative to participation by means of a treatment facility, a credential holder may designate an individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

(a) Has credentials and experience determined by the board liaison to be in the credential holder's area of need.

(b) Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the credential holder.

(c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.

(d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. Register, July, 1996, No. 487, eff. 8-1-96; r. (1) (d) and (2) (d), renum. (1) (e) and (2) (e) to be (1) (d) and (2) (d) and am., Register, January, 2001, No. 541, eff. 2-1-01.

SPS 7.07 Intradepartmental referral. (2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Credential holders participating in the procedure who fail to meet the requirements of their rehabilitation program.

(b) Credential holders who apply and who are determined to be ineligible for the procedure where the board liaison is in possession of information indicating misconduct, negligence or a violation of law.

(c) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating misconduct, negligence or a violation of law.

(d) Credential holders initially referred by the division to the board liaison who fail to complete an agreement for participation.

(e) Credential holders who request early termination of an agreement for participation. In making the decision if a referral should occur, the board liaison shall consider whether the credential holder's therapist approves the early termination and whether this opinion is supported by a second therapist selected by the department who shall always be consulted and shall concur.

(4) The board liaison shall refer credential holders who relapse in the context of the work setting to the division for investigation and prosecution. A credential holder referred under this subsection who has not been dismissed from the procedure may continue to participate in the procedure.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. (1), (3) (a) to (d), Register, July, 1996, No. 487, eff. 8-1-96; CR 10-081: r. (1), am. (3) (a), (b), (c), cr. (3) (e), (4) Register December 2010 No. 660, eff. 1-1-11.

SPS 7.08 Records. (1) CUSTODIAN. All records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintained in the custody of the department secretary or the secretary's designee.

(2) AVAILABILITY OF PROCEDURE RECORDS FOR PUBLIC INSPECTION. Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a case by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the credential holder, the importance of confidentiality to the functional integrity of the procedure, the existence of any promise of confidentiality, statutory or common law rules which

accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation. The fact of a credential holder's participation in the procedure and the status of that participation may be disclosed to credentialing authorities of other jurisdictions.

(3) TREATMENT RECORDS. Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under s. 51.30, Stats., and shall not be made available for public inspection.

(4) PATIENT HEALTH CARE RECORDS. Patient health care records are confidential under s. 146.82, Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under s. 146.82 (2), Stats.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. (2), Register, July, 1996, No. 487, eff. 8-1-96; CR 10-081: am. (2) Register December 2010 No. 660, eff. 1-1-11.

SPS 7.09 Report. The board liaison or coordinator shall report on the procedure to the board at least twice a year and if requested to do so by a board.

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. Register, July, 1996, No. 487, eff. 8-1-96.

SPS 7.10 Applicability of procedures to direct licensing by the department. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the credential holder. In such cases, the department secretary shall have the authority and responsibility of the "board" as the term is used in the procedure and shall designate an employee to perform the responsibilities of the "board liaison."

History: Cr. Register, January, 1991, No. 421, eff. 2-1-91; am. Register, July, 1996, No. 487, eff. 8-1-96.

SPS 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders, or pursuant to disciplinary orders. To be approved as a drug testing program for the department, programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting up an account, establishing a method of payment and supplying pre-printed chain-of-custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide toll-free access or an internet website that is operational 24 hours per day, 7 days per week to inform participants of when to provide specimens and is able to document the date and time of contacts by credential holders.

(e) The program shall maintain and make available to the department and treatment providers through an internet website data that are updated on a daily basis verifying the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with s. 146.82, Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confirmation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for 5 years after the test results are released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants presently or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the U.S. department of transportation collection protocol under 49 CFR 40.

(b) The program shall require delivery of specimens to the laboratory within 24 hours of collection.

(3) Laboratory requirements are:

(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action, the department shall evaluate the laboratory's compliance on a case by case basis.

(b) The program shall utilize a laboratory capable of analyzing specimens for drugs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(d) All positive drug screens shall be confirmed utilizing gas chromatography in combination with mass spectrometry, mass spectrometry, or another approved method.

(e) The laboratory shall allow department personnel to tour facilities where participant specimens are tested.

(4) The requirements for reporting of results are:

(a) The program shall provide results of each specimen to designated department personnel within 24 hours of processing.

(b) The program shall inform designated department personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results are confirmed after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e-mail or electronically transmit laboratory copies of drug test results at the request of the department.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive test results.

(e) The program shall provide chain-of-custody transfer of disputed specimens to an approved independent laboratory for retesting at the request of the participant or the department.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01; CR 10-081: am. (1) (d), (e) Register December 2010 No. 660, eff. 1-1-11.

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

AGENDA REQUEST FORM

| | | | |
|---|--|--|--|
| 1) Name and Title of Person Submitting the Request: Peter Schramm, CE Specialist | | 2) Date When Request Submitted: 12/18/2013 | |
| | | Items will be considered late if submitted after 5 p.m. and less than: <ul style="list-style-type: none"> ▪ 8 business days before the meeting for paperless boards ▪ 14 business days before meeting for all others | |
| 3) Name of Board, Committee, Council, Section: Medical Examining Board | | | |
| 4) Meeting Date: 1/15/2014 | 5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | 6) How should the item be titled on the agenda page? Appointment of CE Liaison | |
| 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: Appointment of a Board Liaison for issues regarding continuing education, including consultation with staff during CE audit | | | |
| 11) Authorization | | | |
| Peter Schramm | | 12/18/2013 | |
| Signature of person making this request | | Date | |
| Jill M. Remy | | 12/18/2013 | |
| 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. | | | |

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**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: December 13, 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 ▪ 08 work days before the meeting for all others | |
| 3) Name of Board, Committee, Council, Sections: Medical Examining Board | | | |
| 4) Meeting Date: January 15, 2014 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? Adoption of Rulemaking Order CR 12-005 relating to physician assistant practice | |
| 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? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <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 Board will adopt the rulemaking order. | | | |
| 11) Shawn Leatherwood | Authorization | December 13, 2013 | |
| Signature of person making this request | | Date | |
| Supervisor (if required) | | Date | |
| Bureau 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 Board Services Bureau 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
MEDICAL EXAMINING BOARD

| | | |
|------------------------------|---|------------------------------|
| IN THE MATTER OF RULE-MAKING | : | ORDER OF THE |
| PROCEEDINGS BEFORE THE | : | MEDICAL EXAMINING |
| MEDICAL EXAMINING BOARD | : | BOARD |
| | : | ADOPTING RULES |
| | : | (CLEARINGHOUSE RULE 12- 005) |

ORDER

The Wisconsin Medical Examining Board proposes an order to repeal Med 8.08; to renumber Med 8.01; to amend Med 8.05 (2) (b) 7., 8.05 (2) (c), 8.07 (1), 8.07 (2) (a) and (e), 8.07 (2) (i); to repeal and recreate Med 8.10; to create Med 8.01 (2), 8.05 (2) (e) and 8.07 (3), relating to physician assistant employment requirements and supervising physician responsibilities.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 448.21 (2) and (3), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 448.05 (5), 448.20 (3) (a), 448.40 (2) (f), Stats.

Explanation of agency authority:

The legislature, via Wis. Stats. §§ 15.08 (5) (b), and 227.11 (2) (a), conferred upon the Medical Examining Board general powers to promulgate rules for the guidance of the profession and to interpret the provisions of statutes it enforces. Section 448.05 (5), Stats. authorizes the Board to promulgate rules that establish licensing and practice standards for physician assistants. Therefore, the Medical Examining Board is both generally and specifically authorized to promulgate these proposed rules.

Section 448.20(3)(a), Stats. confers upon the Council on Physician Assistants the authority to advise the Medical Examining Board on revisions of standards in licensing, practice, education and training of physician assistants.

Related statute or rule:

Sections 448.01 (6), 448.20 (3), Stats., Wis. Admin. Code §MED 10.02(2) (t)

Plain language analysis:

Physician assistants practice as part of a physician-led team with physicians supervising the health care services they provide. Currently, one physician may supervise no more than two physician assistants at one time without permission from the Medical Examining Board (Board). A physician requesting an increase in the numbers of physician assistants to be supervised must submit a written plan for the Board's review. The Board may, in an exercise of its discretion; grant the request if the Board is satisfied that the increased number of physician assistants will not compromise patient safety. The proposed rule purports to change the current regulation by increasing the maximum number of physician assistants a physician may concurrently supervise from 2 to 4. This increase is in line with recent trends in the profession due to widespread physician shortages.

Current law also provides that applicants for licensure as physician assistants may be required to submit to an oral examination. The existing term is outdated and does not reflect that during a personal appearance the Board may also require an applicant to submit to an interview, or a review of credentials, or both. The proposed rule clarifies that the Board may require, as a prerequisite to licensure, successful completion of an oral examination or a personal appearance or both. The proposed rule eliminates other references to outdated terms such as, "substitute supervising physician" found in s. Med 8.10 (2).

SECTION 1. rennumbers and amends Med 8.01

SECTION 2. creates a statement of intent and adds it to the authority and purpose provision.

SECTION 3. amends Med 8.05 (2) (b) 7. to remove outdated references to particular mental health disorders.

SECTION 4. amends Med 8.05 (2) (c) to allow a personal appearance as well as an oral examination if required by the application review panel.

SECTION 5. creates Med 8.05 (2) (e) a provision regarding the components of a satisfactory personal appearance.

SECTION 6. amends Med 8.07 (1) by clarifying that a physician assistant's practice may be supervised by one or more supervising physicians.

SECTION 7. amends Med 8.07 (2) (a) and (e) by striking repetitive and ambiguous language.

SECTION 8. adds a provision regarding annual review of physician assistant prescriptive practices.

SECTION 9. creates a provision regarding identifying a physician assistant's supervising physician.

SECTION 10. repeals Med 8.08

SECTION 11. repeals and recreates Med 8.10 by increasing the number of physician assistants a physician may supervise from 2 to 4.

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

There is no comparative existing or proposed federal rule.

Comparison with rules in adjacent states:

Illinois: The state of Illinois limits the physician assistant to physician ratio to 2:1; unless the supervising physician designates an alternate supervising physician. An alternate supervising physician may supervise more than two physician assistants at the same time when the supervising physician is unable to fulfill the duties. 225 ILL. COMP. STAT. 95/7

Iowa: The state of Iowa limits the physician assistant to physician ratio to 2:1. 645 IAC 326.8 (3) (148 C)

Michigan: The state of Michigan allows a physician assistant to physician ratio of 4:1 when the supervising physician is a solo practitioner who practices in a group of physicians and treats patients on an outpatient basis. Physicians who have privileges at a health facility or agency or a state correctional facility may supervise more than four physician assistants; but the physician assistant to physician ratio is 2:1 if the physician supervises a physician assistant at more than one location. MCLS § 333.17048

Minnesota: The state of Minnesota allows a physician to supervise five physician assistants simultaneously. In the case of an emergency a physician may supervise more than five physician assistants at any given time. MINN. STAT. §147A.01

Summary of factual data and analytical methodologies:

In recognition of physician work-force shortages and at the request of the Council on Physician Assistants, the Medical Examining Board created a work group to research and advise the board on whether or not to increase the supervision ratio of physician assistants to physicians, and if so under what circumstances. The work group consisted of members of the Medical Examining Board, who are licensed physicians, the chairperson of the Council on Physician Assistants and consultation from the State Medical Society, the Wisconsin Council of Physician Assistants and the Wisconsin Hospital Association. Members of the work group examined the statutes and regulations of other states as well as recommendations of the Federation of State Medical Boards, the

American Medical Association, the American Association of Family Practitioners and the American Academy of Physician Assistants.

The national trend, as recognized by the Federation of State Medical Boards and the American Academy of Physician Assistants, is to increase the number of physician assistants a physician may supervise. Both organizations have, as a national model, recommended that regulatory bodies refrain from specifying a particular number of physician assistants a physician may concurrently supervise. Rather, the recommendation is that supervising physicians make the determination based on prevailing standards for competent medical practice, day-to-day realities, and the nature of the physician's actual practice.

The work group presented its findings to the Medical Examining Board with a recommendation that the board increase the physician to physician assistant ratio to 1:5. The board considered several factors including practice setting in which physician and physician assistants carry out their duties and patient care issues such as a growing shortage of health care practitioners in underserved communities. The board emphasized the need for adequate physician supervision of physician assistant's practice and adopted the work group's recommendation to increase the ratio of physician assistants a physician may supervise. However, after extensive discussion, the board decided to authorize a physician to physician assistant supervision ratio of 1:4.

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

The department finds that this rule will have no effect on small business as small business is defined in 227.114 (1), Stats.

Anticipated costs incurred by the private sector:

The department finds that this rule will incur no additional cost to the private sector.

Fiscal Estimate and Economic Impact Analysis:

The proposed rule is not anticipated to have any fiscal impact on businesses, public utility rate payers, local government units or the state's economy as a whole. The proposed rule was posted on the department's website for 14 days. Comments were solicited. The department did not receive any comments regarding an economic impact from local government units, specific business sectors or public utility rate payers. Therefore, the department finds the proposed rule will have no economic impact.

Effect on small business:

The department finds that this rule will have no effect on small business as small business is defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted at Greg.Gasper@wisconsin.gov or by calling (608) 266-8608.

Agency contact person:

Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.L Leatherwood@wisconsin.gov.

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

Comments may be submitted to Shawn Leatherwood, Paralegal, Department of Safety and Professional Services, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received on or before February 15, 2012, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med. 8.01 is renumbered Med 8.01 (1):

SECTION 2. Med 8.01 (2) is created to read:

Med 8.01 (2) Physician assistants provide health care services as part of physician-led teams, the objectives of which include safe, efficient and economical health care. The realities of the modern practice of medicine and surgery require supervising physicians and physician assistants to use discretion in delivering health care services, typically at the level of general supervision. The constant physical presence of a supervising physician is often unnecessary. The supervising physician and the physician assistant are jointly responsible for employing more intensive supervision when circumstances require direct observation or hands-on assistance from the supervising physician.

SECTION 3. Med 8.05 (2) (b) 7. is amended to read:

Med 8.05 (2) (b) 7. ~~Has been diagnosed as suffering from pedophilia, exhibitionism or voyeurism.~~ with any condition that may create a risk of harm to a patient or the public.

SECTION 4. Med 8.05 (2) (c) is amended to read:

Med 8.05 (2) (c) An application filed under this chapter shall be reviewed by an application review panel of at least 2 council members designated by the chairperson of the board to determine whether an applicant is required to complete an oral examination or a personal appearance or both under par. (a) (b). If the application review panel is not able to reach unanimous agreement on whether an applicant is eligible for licensure

without completing an oral examination or a personal appearance or both, the application shall be referred to the board for a final determination.

SECTION 5. Med 8.05 (2) (e) is created to read:

Med 8.05 (2) (e) The board may require an applicant to complete a personal appearance for purposes of interview or review of credentials or both. An applicant's performance at a personal appearance is satisfactory if the applicant establishes to the board's satisfaction that the applicant has met requirements for licensure and is minimally competent to practice as a physician assistant.

SECTION 6. Med 8.07 (1) is amended to read:

Med 8.07 Practice. (1) SCOPE AND LIMITATIONS. In providing medical care, the entire practice of any physician assistant shall be under the supervision of one or more a licensed physicians or physicians exempt from licensure requirements pursuant to s. 448.03 (2) (b), Stats.. The scope of practice is limited to providing medical care as specified in sub. (2). A physician assistant's practice may not exceed his or her educational training or experience and may not exceed the scope of practice of the supervising physician providing supervision. A medical care task assigned by the supervising physician to a physician assistant may not be delegated by the physician assistant to another person.

SECTION 7. Med 8.07 (2) (a) and (e) are amended to read:

Med 8.07 (2) (a) Attending initially a patient of any age in any setting to obtain a personal medical history, perform an appropriate physical examination, and record and present pertinent data concerning the patient ~~in a manner meaningful to the supervising physician.~~

Med 8.07 (2) (e) Assisting the supervising physician in a hospital or facility, as defined in s. 50.01 (1m), Stats., by assisting in surgery, making patient rounds, recording patient progress notes, compiling and recording detailed narrative case summaries and accurately writing or executing orders ~~under the supervision of a licensed physician.~~

SECTION 8. Med 8.07 (2) (i) is amended to read:

Med 8.07 (2) (i) Issuing written prescription orders for drugs ~~under the supervision of a licensed physician and in accordance with procedures specified in s. Med 8.08 (2)~~ provided the physician assistant has had an initial and at least annual thereafter, review of the physician assistant's prescriptive practices by a physician providing supervision. Such reviews shall be documented in writing, signed by the reviewing physician and physician assistant and made available to the Board for inspection upon reasonable request.

SECTION 9. 8.07 (3) is created to read:

Med 8.07 (3) IDENTIFYING SUPERVISING PHYSICIAN. The physician providing supervision must be readily identifiable by the physician assistant through procedures commonly employed in the physician assistant's practice.

SECTION 10. Med 8.08 is repealed.

SECTION 11. Med 8.10 is repealed and recreated to read:

Med 8.10 Physician to physician assistant ratio. (1) No physician may supervise more than 4 on duty physician assistants at any time unless a written plan to do so has been submitted to and approved by the board. Nothing herein shall limit the number of physician assistants for whom a physician may provide supervision over time. A physician assistant may be supervised by more than one physician while on duty.

(2) A supervising physician shall be available to the physician assistant at all times for consultation either in person or within 15 minutes of contact by telecommunication or other means.

SECTION 12. EFFECTIVE DATE. 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 _____

Chairperson
Medical Examining Board

**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: December 17, 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 ▪ 08 work days before the meeting for all others |
|--|--|

3) Name of Board, Committee, Council, Sections:

 Medical Examining Board

| | | |
|--|--|--|
| 4) Meeting Date: January 15, 2014 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? 2013 Wisconsin Act 111 and Med 18 Alternate Modes of Treatment |
|--|--|--|

| | | |
|--|--|--|
| 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? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <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 Board will review recently passed legislation, 2013 Wisconsin Act 111, and discuss its impact on s. MED 18 Wis. Admin. Code.

| | |
|---|--------------------------|
| 11) Authorization Shawn Leatherwood | December 17, 2013 |
| Signature of person making this request | Date |
| Supervisor (if required) | Date |
| Bureau 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 Board Services Bureau 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



2013 Assembly Bill 139

Date of enactment: December 13, 2013

Date of publication*: December 14, 2013

2013 WISCONSIN ACT 111

AN ACT to repeal 448.30 (1); to amend 448.30 (intro.); and to create 448.30 (7) of the statutes; relating to: the duty of physicians to inform patients of treatment options.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 448.30 (intro.) of the statutes is amended to read:

~~448.30 Information on alternate modes of treatment~~ **Informed consent.** (intro.) Any physician who treats a patient shall inform the patient about the availability of ~~all reasonable~~ alternate, viable medical modes of treatment and about the benefits and risks of these treatments. ~~The reasonable physician standard is the standard for informing a patient under this section. The reasonable physician standard requires disclosure only of information that a reasonable physician in the same or a~~

~~similar medical specialty would know and disclose under the circumstances.~~ The physician's duty to inform the patient under this section does not require disclosure of:

SECTION 2. 448.30 (1) of the statutes is repealed.

SECTION 3. 448.30 (7) of the statutes is created to read:

448.30 (7) Information about alternate medical modes of treatment for any condition the physician has not included in his or her diagnosis at the time the physician informs the patient.

SECTION 4. **Initial applicability.**

(1) This act first applies to a physician required to inform a patient about modes of treatment on the effective date of this subsection.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

Chapter Med 18

ALTERNATE MODES OF TREATMENT

Med 18.01 Authority, purpose and scope.
 Med 18.02 Definitions.
 Med 18.03 Communication of alternate modes of treatment.

Med 18.04 Exceptions to communication of alternate modes of treatment.
 Med 18.05 Recordkeeping.

Med 18.01 Authority, purpose and scope.

(1) **AUTHORITY.** The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 227.11, and 448.40, Stats.

(2) **PURPOSE.** The purpose of the rules is to define the obligation of a physician to communicate alternate modes of treatment to a patient.

(3) **SCOPE.** The scope of the rules pertain to medical and surgical procedures which may be prescribed and performed only by a physician, as defined in s. 448.01 (5), Stats.

History: Cr. Register, September, 1983, No. 333, eff. 10-1-83; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1989, No. 401.

Med 18.02 Definitions. (1) "Emergency" means a circumstance in which there is an immediate risk to a patient's life, body part or function which demands prompt action by a physician.

(2) "Experimental treatment" means a mode of treatment which has not been generally adopted by the medical profession.

(3) "Viable" as used in s. 448.30, Stats., to modify the term, "medical modes of treatment" means modes of treatment generally considered by the medical profession to be within the scope of current, acceptable standards of care.

History: Cr. Register, September, 1983, No. 333, eff. 10-1-83.

Med 18.03 Communication of alternate modes of treatment. (1) It is the obligation of a physician to communicate alternate viable modes of treatment to a patient. The communication shall include the nature of the recommended treatment, alternate viable treatments, and risks or complications of the proposed treatment, sufficient to allow the patient to make a prudent decision. In the communication with a patient, a physician shall take into consideration:

- (a) A patient's ability to understand the information;
- (b) The emotional state of a patient; and,
- (c) The physical state of a patient.

(2) Nothing in sub. (1) shall be construed as preventing or limiting a physician in recommending a mode of treatment which is in his or her judgment the best treatment for a patient.

History: Cr. Register, September, 1983, No. 333, eff. 10-1-83.

Med 18.04 Exceptions to communication of alternate modes of treatment. (1) A physician is not required to explain each procedural or prescriptive alternative inherent to a particular mode of treatment.

(2) In an emergency, a physician is not required to communicate alternate modes of treatment to a patient if failure to provide immediate treatment would be more harmful to a patient than immediate treatment.

(3) A physician is not required to communicate any mode of treatment which is not viable or which is experimental.

(4) A physician may not be held responsible for failure to inform a patient of a possible complication or benefit not generally known to reasonably well-qualified physicians in a similar medical classification.

(5) A physician may simplify or omit communication of viable modes of treatment if the communication would unduly confuse or frighten a patient or if a patient refuses to receive the communication.

History: Cr. Register, September, 1983, No. 333, eff. 10-1-83.

Med 18.05 Recordkeeping. A physician shall indicate on a patient's medical record he or she has communicated to the patient alternate viable modes of treatment.

History: Cr. Register, September, 1983, No. 333, eff. 10-1-83.

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**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: December 17, 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 ▪ 08 work days before the meeting for all others | |
| 3) Name of Board, Committee, Council, Sections: Medical Examining Board | | | |
| 4) Meeting Date: January 15, 2014 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? 165-Med 13.06 Continuing Education Audit Scope Statement and Timeline | |
| 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? If yes, who is appearing? <input type="checkbox"/> Yes by _____ (name) <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: <p>The Board will discuss whether the rule will have a minimal to none, moderate or significant impact on small business in accordance with Executive Order 50, review the timeline for promulgation of the proposed rule and approve the scope statement for implementation.</p> | | | |
| 11) Shawn Leatherwood <hr/> Signature of person making this request | | Authorization December 17, 2013 <hr/> Date | |
| <hr/> Supervisor (if required) | | <hr/> Date | |
| <hr/> Bureau 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 Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. | | | |

STATEMENT OF SCOPE

MEDICAL EXAMINING BOARD

Rule No.: 165-MED 13.06

Relating to: Continuing Education Audit

Rule Type: Permanent

This amended Statement of Scope replaces the
Statement of Scope submitted to the Governor on July 19, 2013

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

The objective of this proposed rule is to empower the Medical Examining Board (Board) with the ability to conduct continuing education audits of its licensees every two years.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Currently, the Medical Examining Board may conduct an audit of continuing education at any time. However, there is no requirement as to when an audit must take place. The proposed rule would insure that an audit of continuing education credits would be conducted every two years. The audit would verify whether licensees had completed the 30 hours of required continuing education during the 2 calendar years preceding the calendar year for which application for registration was made. The proposed rule may include other amendments as necessary based on changes to s. Med 13.06.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 227.11 (2), Stats., discusses the parameters of an agency's rule-making authority stating an agency, "may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation." Section 227.01(1), Stats., defines agency as a board. The Medical Examining Board falls within this definition. Therefore, the Board may promulgate administrative rules which interpret the statutes it enforces or administers as long as the proposed rule does not exceed proper interpretation of the statute.

Section 448.13 (1m), Stats provides that, "[t]he board shall, on a random basis, verify the accuracy of proof submitted by physicians under sub. (1) (a) and may, at any time during the 2 calendar years specified in sub. (1)(a), require a physician to submit proof of any continuing education, professional development, and maintenance of certification or performance improvement or continuing medical education programs or course of study that he or she has attended and completed at that time during the 2 calendar years." This statute dictates that the accuracy of evidence of continuing education must be verified. Therefore, the Board is authorized to promulgate rules that will carry out the purpose of this statute.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

State employees will spend approximately 50 hours developing the proposed rule.

6. List with description of all entities that may be affected by the proposed rule:

Wisconsin licensed physicians will be affected by this proposed rule.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no comparable existing or proposed federal regulations dealing with this issue.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

This rule is not likely to have a significant economic impact on small businesses.

Contact Person: Shawn Leatherwood

Authorized Signature for Implementation

Date

MED 13.06 CE Audit

| Action | Target Date |
|---|-------------------------|
| Get Department/Board approval of scope statement | |
| Get Governor approval of scope statement and transmit to LRB | November 15, 2013 |
| Scope statement printed in <i>Wisconsin Administrative Register</i> | December 15, 2013 |
| Scope statement implemented | January 15, 2014 |
| First meeting with Board | February 19, 2014 |
| Second meeting with Board | March 19, 2014 |
| Finalize draft rule and Notice of Economic Impact Analysis (EIA) | April 16, 2014 |
| Post the EIA Notice | May 1, 2014 |
| End of comment period for draft EIA | May 15, 2014 |
| Finalize EIA | May 22, 2014 |
| Transmit Hearing draft and EIA to Clearinghouse, LRB and DOA | May 27, 2014 |
| Transmit Hearing notice and EIA to LRB and Clearinghouse (& Clerks) | May 27, 2014 |
| Announcement noticed in <i>Register</i> | June 15, 2014 |
| Hearing date | July 16, 2014 |
| Finalize rule materials for legislative review | August 22, 2014 |
| Get Board approval for legislative review | September 17, 2014 |
| Get GORC approval for legislative review | October 1, 2014 |
| Transmit for legislative review | January 20, 2015 |
| Assignment of rules | February 3, 2015 |
| Senate and Assembly review ends (includes no hearing) | March 5, 2015 |
| Rules sent to Joint Committee for Review of Administrative Rules | March 9, 2015 |
| JCRAR review ends (no extension included) | April 8, 2015 |
| Adoption and filing of rules | May 20, 2015 |
| Rules in effect (includes 1.5 months for printing) | July 1, 2015 |

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

AGENDA REQUEST FORM

| | | | |
|---|--|---|--|
| 1) Name and Title of Person Submitting the Request: Joshua Archiquette, Executive Staff Assistant | | 2) Date When Request Submitted: 5 Dec 2013 <small>Items will be considered late if submitted after 4:30 p.m. and less than 8 work days before the meeting.</small> | |
| 3) Name of Board, Committee, Council, Sections: Medical Examining Board | | | |
| 4) Meeting Date: 15 Jan 2014 | 5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | 6) How should the item be titled on the agenda page? FSMB Matters 1. Minimum Data Set Pilot Implementation Project | |
| 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: The Board will discuss the Minimum Data Pilot Implementation Project | | | |
| 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: 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. | | | |

From: [Ryan, Thomas - DSPS](#)
To: [Archiquette, Joshua N - DSPS](#)
Cc: ["Simons, Kenneth"](#)
Subject: FW: Minimum Data Set Pilot
Date: Thursday, November 07, 2013 8:12:45 AM
Attachments: [MDS Questions FSMB 2013.doc.doc.doc](#)
[FSMB Framework for a Minimal Physician Data Set.pdf.pdf.pdf](#)
Importance: High

Josh, please add to the MEB agenda, including the e-mail and the attachments. Thanks!



November 4, 2013

Dear Executive Director:

I am pleased to take this opportunity to update you on the progress that has been made in advancing the physician **Minimum Data Set (MDS)** initiative and to offer an opportunity to your state board to participate in an MDS Pilot Implementation Project this year.

Understanding the physician workforce is vital considering the gradual but undeniable shift in the demographic composition of the United States, and the expected impact of health care reform. The country's population makeup is aging, and the Affordable Care Act is expected to provide health care coverage to as many 30 million Americans by 2019. Not only is the demand for healthcare increasing, but concerns about the sustainability, cost, and delivery of health care underscore the importance of understanding the physician workforce.

Through the license renewal process, state medical and osteopathic boards are in a unique position to collect additional, up-to-date workforce information from physicians. Implementing a simple MDS using a uniform, basic set of questions which provide data describing where physicians are practicing, who is providing patient care and the types of care they are providing will offer greater insight to state and federal policymakers as coordinated efforts are made to deliver quality health care that is affordable, efficient and accessible.

The input that many of you have provided, directly or indirectly, to the discussions we have had culminated in the adoption by our House of Delegates of a Recommended Framework for a Minimum Physician Data Set. Input that Executive Directors have provided more recently indicates strong support for collecting workforce data. Earlier this year, 55 individuals from 69 of the state boards completed a survey about workforce and an MDS. The survey revealed that 82% of the responding boards said collecting workforce data is "extremely important" or "important" and many state boards are already collecting some of the data for an MDS.

This past month the FSMB was awarded a supplemental grant, through the Licensure Portability Program, to be used specially for a pilot project to begin implementation of a state-based MDS in the United States. The FSMB stands ready to assist, and is excited about working with state boards on this important initiative. The ultimate decision about whether and how MDS will get implemented, of course, remains with each of the state medical and osteopathic boards.

Please let us know by November 15, 2013 if your state medical or osteopathic board may be interested in participating with the FSMB in an MDS Pilot Implementation Project beginning this year. Once we have ascertained which of the state boards are ready to move forward we will reach out with our staff to explore each board's specific needs, capabilities, resources,

interests, goals and concerns.

I look forward to hearing from you shortly.

Sincerely,

Humayun J. Chaudhry, D.O., MACP, FACOI
President and Chief Executive Officer

Federation of State Medical Boards

400 Fuller Wiser Road | Suite 300 | Euless, TX 76039
817-868-4044 direct | 817-868-4144 fax
www.fsmb.org



Physician Minimum Data Set Questions

1. What is your current employment status?
 - Actively working in a position that requires a medical license
 - Actively working in a field other than medicine
 - Not currently working
 - Retired

2. Are you currently providing direct clinical or patient care on a regular basis?
 - Yes
 - No
 - a. If no, how many years has it been since you provided clinical or patient care?
 - Less than 2 years
 - 2 to 5 years
 - 5 to 10 years
 - More than 10 years

3. Which of the following categories best describes your primary and secondary practice or work setting(s) where you work the most hours each week?

| Practice Setting | Principal | Secondary |
|--|-----------------------|-----------------------|
| Office/Clinic—Solo Practice | <input type="radio"/> | <input type="radio"/> |
| Office/Clinic—Partnership | <input type="radio"/> | <input type="radio"/> |
| Office/Clinic—Single Specialty Group | <input type="radio"/> | <input type="radio"/> |
| Office/Clinic—Multi Specialty Group | <input type="radio"/> | <input type="radio"/> |
| Hospital—Inpatient | <input type="radio"/> | <input type="radio"/> |
| Hospital—Outpatient | <input type="radio"/> | <input type="radio"/> |
| Hospital—Emergency Department | <input type="radio"/> | <input type="radio"/> |
| Hospital—Ambulatory Care Center | <input type="radio"/> | <input type="radio"/> |
| Federal Government Hospital | <input type="radio"/> | <input type="radio"/> |
| Research Laboratory | <input type="radio"/> | <input type="radio"/> |
| Medical School | <input type="radio"/> | <input type="radio"/> |
| Nursing Home or Extended Care Facility | <input type="radio"/> | <input type="radio"/> |
| Home Health Setting | <input type="radio"/> | <input type="radio"/> |
| Hospice Care | <input type="radio"/> | <input type="radio"/> |
| Federal/State/Community Health Center(s) | <input type="radio"/> | <input type="radio"/> |
| Local Health Department | <input type="radio"/> | <input type="radio"/> |
| Telemedicine | <input type="radio"/> | <input type="radio"/> |
| Volunteer in a Free Clinic | <input type="radio"/> | <input type="radio"/> |
| Other (specify): | <input type="radio"/> | <input type="radio"/> |

4. Which of the following best describes the area(s) of practice in which you spend most of your professional time:

| Area of Practice | Principal | Secondary | Completed Accredited Residency Program or Fellowship |
|-----------------------------------|-----------|-----------|--|
| Adolescent Medicine | 0 | 0 | 0 |
| Anesthesiology | 0 | 0 | 0 |
| Allergy and Immunology | 0 | 0 | 0 |
| Cardiology | 0 | 0 | 0 |
| Child Psychiatry | 0 | 0 | 0 |
| Colon and Rectal Surgery | 0 | 0 | 0 |
| Critical Care Medicine | 0 | 0 | 0 |
| Dermatology | 0 | 0 | 0 |
| Endocrinology | 0 | 0 | 0 |
| Emergency Medicine | 0 | 0 | 0 |
| Family Medicine/General Practice | 0 | 0 | 0 |
| Gastroenterology | 0 | 0 | 0 |
| Geriatric Medicine | 0 | 0 | 0 |
| Gynecology Only | 0 | 0 | 0 |
| Hematology & Oncology | 0 | 0 | 0 |
| Infectious Diseases | 0 | 0 | 0 |
| Internal Medicine (General) | 0 | 0 | 0 |
| Nephrology | 0 | 0 | 0 |
| Neurological Surgery | 0 | 0 | 0 |
| Neurology | 0 | 0 | 0 |
| Obstetrics and Gynecology | 0 | 0 | 0 |
| Occupational Medicine | 0 | 0 | 0 |
| Ophthalmology | 0 | 0 | 0 |
| Orthopedic Surgery | 0 | 0 | 0 |
| Other Surgical Specialties | 0 | 0 | 0 |
| Otolaryngology | 0 | 0 | 0 |
| Pathology | 0 | 0 | 0 |
| Pediatrics (General) | 0 | 0 | 0 |
| Pediatrics Subspecialties | 0 | 0 | 0 |
| Physical Med. & Rehab. | 0 | 0 | 0 |
| Plastic Surgery | 0 | 0 | 0 |
| Preventive Medicine/Public Health | 0 | 0 | 0 |
| Psychiatry | 0 | 0 | 0 |
| Pulmonology | 0 | 0 | 0 |
| Radiation Oncology | 0 | 0 | 0 |
| Radiology | 0 | 0 | 0 |
| Rheumatology | 0 | 0 | 0 |
| Surgery (General) | 0 | 0 | 0 |
| Thoracic Surgery | 0 | 0 | 0 |
| Urology | 0 | 0 | 0 |
| Vascular Surgery | 0 | 0 | 0 |
| Other Specialties | 0 | 0 | 0 |

5. How many weeks did you work in medical related positions in the past 12 months?
6. For all medical related positions held in (insert state name), indicate the average number of hours per week spent on each major activity:

| | |
|-------------------------------------|------------------|
| Clinical or patient care | _____ hours/week |
| Research | _____ hours/week |
| Teaching/Education | _____ hours/week |
| Administration | _____ hours/week |
| Volunteering (medical related only) | _____ hours/week |
| Other (specify): _____ | _____ hours/week |

Another approach to obtaining this information would be to ask licensees: (1) number of weeks worked in the past 12 months, (2) average number of hours worked per week, and (3) the percentage of time per week spent on each major activity (e.g., clinical or patient care, research etc.).

7. What is the location of the site(s) where you spend most of your time providing direct clinical or patient care? Please enter the complete address for up to three locations and your direct patient care hours per week at each site.

Principal Location Address

 Number Street

 City/Town State Zip Code: □□□□□

Direct patient care hours per week at site: _____

Second Location Address

 Number Street

 City/Town State Zip Code: □□□□□

Direct patient care hours per week at site: _____

Third Location Address

 Number Street

 City/Town State Zip Code: □□□□□

Direct patient care hours per week at site: _____

8. What is your sex?
 - Male
 - Female

Optional Questions

9. What is your race? (1 or more categories may be selected)—**Optional**
- White
 - Black or African American
 - American Indian or Alaska Native
 - Asian
 - Native Hawaiian/Other Pacific Islander
 - Other (specify)

The workgroup acknowledges that this is a condensed list and state boards may choose to use more detailed response sets (e.g., HHS Data Standards for Race and US Census Bureau Race Categories).

10. Ethnicity: Are you Hispanic, Latino/a, or of Spanish origin?
(1 or more categories may be selected)—**Optional**
- No
 - Yes, Mexican, Mexican American, Chicano/a
 - Yes, Puerto Rican
 - Yes, Cuban
 - Yes, Another Hispanic, Latino/a, or of Spanish origin (specify)

11. Do you speak a language other than English at home? **Optional**
- a. Yes
 - b. No

12. What is this language? (if you answered Yes to #11) **Optional**
- a. Spanish
 - b. Other Language (identify)

Workgroup to Define a Minimal Data Set

Report on a Recommended Framework for a Minimal
Physician Data Set

April 2012

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PARTICIPANTS ON THE WORKGROUP TO DEFINE A MINIMAL DATA SET

WORKGROUP MEMBERS

Richard A. Whitehouse, Esq., CMBE, Chair
Board of Directors, Federation of State Medical Boards
Executive Director, State Medical Board of Ohio

Mark A. Eggen, MD
Minnesota Board of Medical Practice

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Chair, Washington Board of Osteopathic Medicine and Surgery

Margaret (Meg) B. Hansen, PA-C, MPAS
Executive Director, South Dakota Board of Medical and Osteopathic Examiners

Dinesh Patel, MD, FACS
Partners Healthcare, Massachusetts

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Federation of State Medical Boards

Sheila R. Still
Admin Asst, Education and Library
Federation of State Medical Boards

**FEDERATION OF STATE MEDICAL BOARDS
WORKGROUP TO DEFINE A MINIMAL DATA SET**

Report to the Federation of State Medical Boards of the United States, Inc.

INTRODUCTION AND CHARGE

The passage of the Patient Protection and Affordable Care Act (ACA) in 2010, the aging of the population and the overall growth of the population have been described as three of the most important factors influencing why accurate assessments of the supply and demand for physicians are critical to understanding the health care needs of residents throughout the United States and its territories. Under the ACA, it is estimated that by 2019 an additional 32 million Americans may become insured.ⁱ In terms of demographics, the total population of the United States is projected to grow by 60 million, to a total of 373 million, by 2030.ⁱⁱ Additionally, baby boomers started turning 65 in 2011 and each day for the next 19 years an estimated 10,000 boomers will reach age 65.ⁱⁱⁱ By 2030, all boomers will be 65 years of age or older and represent nearly 20% of the total population.^{iv} Health-care reform, a growing and aging population combined with a projected physician shortage as high as 130,000 by 2025,^v underscore the importance of knowing as much as possible about the physician workforce. How this challenge is addressed will impact many areas of the physician education and qualification process, including initial medical licensure (e.g., number of test administrations) and Maintenance of Licensure (MOL), specialty certification and Maintenance of Certification (MOC) and Osteopathic Continuous Certification (OCC).

As part of their ongoing effort to protect the public, the nation's state medical boards regularly collect and disseminate information about actively licensed physicians in their jurisdictions to the Federation of State Medical Boards (FSMB) Physician Data Center. In 2010, the FSMB systematically collated and analyzed all of this data to determine an accurate count of the number, age, specialty certification, and location by region of actively licensed physicians in the United States and the District of Columbia.^{vi} The inaugural 2010 FSMB Census was successful and highlighted the need for additional research. A limitation of the 2010 FSMB Census data was that it did not contain information about a physician's professional activity. Physicians engage in patient care and/or other non-patient care activities, including teaching, administration, research or other professional activities. Although non-patient care includes important activities that contribute to quality health care delivery, many physicians involved in such activities may have an active license, which may contribute to an overestimation of the current physician workforce of physicians able to directly deliver health care. Furthermore, a licensed physician may be retired or work only part time, which could also contribute to an overestimation of the current physician workforce.

It was clear from the census that opportunities exist for future analyses that could be maximized with an expanded data-collection collaboration between the FSMB, its member boards, and other organizations within the house of medicine. In 2011, the FSMB House of Delegates adopted a

resolution that called for the FSMB, in cooperation with state medical boards, to develop a minimum physician demographic and practice data set, as well as a data collection tool and physician data repository. The FSMB Board of Directors, led by Board Chair Janelle Rhyne, MD, MA, MACP, created the FSMB Workgroup to Define a Minimal Data Set.

The FSMB's Minimal Data Set (MDS) Workgroup convened in the summer of 2011 and was charged with consulting with national workforce groups such as the National Center for Health Workforce Analysis (NCHWA) to facilitate development of a minimal physician demographic data set as well as to develop a minimum physician demographic data collection tool and a physician demographic data repository. In carrying out its charge, the MDS Workgroup was asked to build and recommend a framework for state boards, or their designated affiliate organizations, to collect and share with the FSMB additional demographic and practice data for physicians licensed in their jurisdictions.

IMPORTANCE OF A MINIMAL PHYSICIAN DATA SET

The MDS Workgroup identified five key reasons why establishing a minimal data set is important to the health care system:

1. Physician workforce participation (entry, retention, exit and reentry) is subject to unpredictable economic factors, licensure and certification requirements, skills portability, as well as structural workforce issues such as participation levels, workforce aging, lifestyle factors, and gender.
2. Because physicians renew their license on a regular basis, working with state medical boards on a minimal data set is a cost-effective approach for collecting basic physician data.
3. It provides accurate and consistent information about physicians to state and federal policy makers which could be used in planning and resource allocation. Accurate projections of physician supply inform policymakers about the number and specialty composition of physicians, as well as help determine the need for other health care practitioners.
4. Some individuals hold licenses in more than one jurisdiction; uniform physician workforce data would lead to a better understanding of geographic participation and migratory patterns.
5. Physician supply and composition impact areas of the education and qualification process, including initial licensure, Maintenance of Licensure (MOL), specialty certification and Maintenance of Certification (MOC) and Osteopathic Continuous Certification (OCC).

METHODOLOGY

The MDS Workgroup held teleconference meetings on July 12, 2011, and September 19, 2011. The workgroup also had one face-to-face meeting with representatives from the National Center for Health Workforce Analysis (NCHWA) in Washington, D.C., on November 22, 2011.

The MDS Workgroup agreed that a recommended framework for a minimal physician data set should be ready to be presented to the FSMB House of Delegates for a vote during the April 2012 FSMB Annual Meeting. However, if additional time was needed, an extension would be granted.

The MDS Workgroup used a knowledge-based approach to its deliberations. The workgroup reviewed pertinent health workforce literature, considered research conducted by other organizations, and studied standardized questions suggested by the NCHWA. To compare the current process being used and the physician workforce data elements being collected, the MDS Workgroup also gathered information available from 59 of the 69 FSMB member boards involved in licensing decisions. The information collected showed that 63 percent of responding boards collect at least some physician workforce data. As demonstrated by the findings, the procedures for collecting the data and the types of data elements collected vary noticeably for the 37 boards that indicated they collect information. Of the 37 boards that collect at least some physician workforce data the research indicates:

- 68 percent include workforce questions in their license renewal application
- 54 percent ask workforce questions that are voluntary
- 19 percent ask workforce questions that are mandatory
- 16 percent have a combination of voluntary and mandatory questions

In terms of demographic data sought by the boards, highlights from the 37 boards that collect data show similar variability:

- 49 percent ask for gender
- 46 percent ask for race
- 38 percent ask for ethnic background

The information collected also provided a range of other data points regarding physician characteristics and patient care. Generally, the research showed a fairly wide range of practices in terms of what kinds of questions are asked and what kind of information is being compiled by the boards.

Among the categories are questions about full-time vs. part-time practice, average hours per week per specialty area, hours per week spent in various practice settings, practice location and a variety of others.

- 78 percent ask if the physician works full time or part time
- 65 percent ask for practicing specialty(s)
- 49 percent ask average hours per week per specialty(s)
- 62 percent ask for average hours per week per practice setting

FRAMEWORK FOR A MINIMAL PHYSICIAN DATA SET

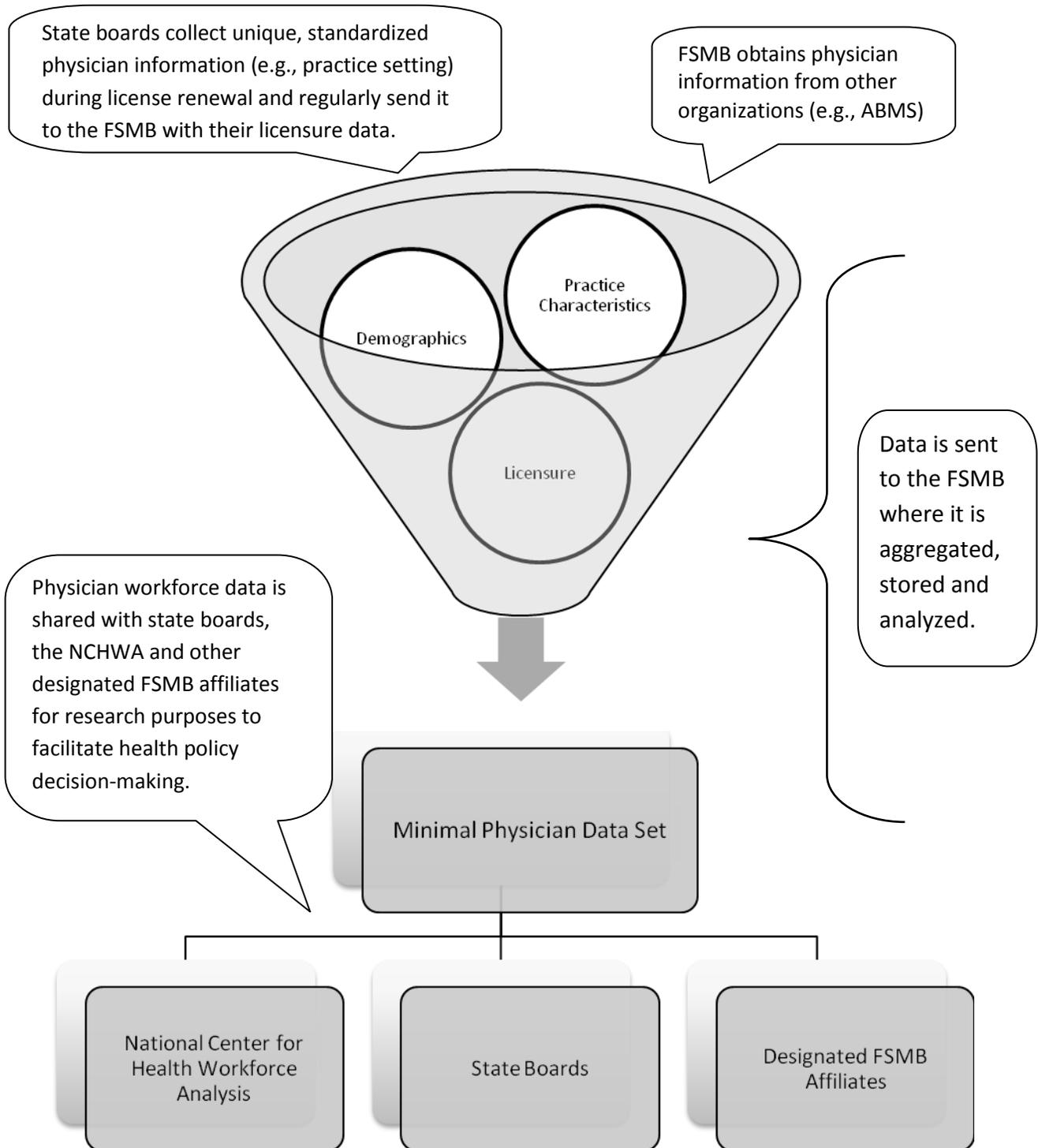
After reviewing applicable health workforce literature and analyzing information from state boards and the National Center for Health Workforce Analysis (NCHWA), the MDS Workgroup agreed that **a state board's license renewal process is a unique opportunity for collecting additional, up-to-date workforce information from physicians.** Twenty-six percent of state boards require physicians to renew their license every year, 66 percent require renewal once every two years and the remaining boards require renewal every three years or more. In addition, information gathered on the 37 boards that collect at least some physician workforce data indicated that the procedures for collecting data and the types of data elements collected vary considerably.

Based on this information, the MDS Workgroup developed and recommended a framework for a uniform minimal physician data set to be presented to the FSMB Board of Directors, state boards, and finally the FSMB House of Delegates at the 2012 FSMB Annual Meeting with the intent of future implementation by state medical and osteopathic boards. **The recommended principles of the framework for a minimal physician data set are:**

- **Workforce questions for a minimal physician data set should be added to a renewal application or be a separate questionnaire tied directly to the renewal process.** The collection process should be determined by each board, but the workgroup strongly recommends that the questions be a mandatory component to the renewal process to stress the importance of the data and maximize the quantity and quality of data collected. If a state board does not have authority to collect the majority of data suggested as part of license renewal, the board should consult with the FSMB and other state boards about establishing a survey to obtain workforce information from their licensees.
- **Workforce questions for a minimal physician data set should be standardized across all state boards and not found in other sources.** Questions should be straightforward for licensees, take about 10 minutes or less to answer, and be in an easy-to-use electronic format that follows best practices for user-friendly, survey interface design (e.g., drop-down menus).

- State boards may choose to collect data using various methods. To further enhance the value of their data, state boards may also choose to expand their data by adding other questions not recommended for the minimal physician data set. **State boards should share their methods for collecting physician data and the additional information they collect with the FSMB and other state boards to help establish best practices for collecting physician workforce data.**
- **The minimal physician data set is a shared responsibility, and the FSMB will assist state boards in building the database.**
- **Data for the minimal physician data set should be aggregated and stored in the FSMB's Federation Physician Data Center (FPDC).** The FPDC is a comprehensive central repository of state-based data that contains some biographical, educational and disciplinary information about physicians licensed in jurisdictions throughout the United States and its territories. The complete database contains more than 1.6 million physician records, including information about physicians who are currently licensed, no longer licensed, or deceased. The FPDC is continuously updated and the majority of state boards provide medical licensure information to the FPDC on a monthly or quarterly basis. The workgroup strongly recommends that the boards include physician data from standardized workforce questions with their regular transmissions of licensure data to the FPDC.
- **The FSMB should maintain a central repository of physician workforce data and create a confidential database for use by state boards, the NCHWA and other designated FSMB affiliates for research purposes.**
- **The FSMB should continue to collaborate with state boards and affiliate health care organizations to improve the collection and accuracy of physician workforce data.**

GRAPHIC REPRESENTATION OF A MINIMAL PHYSICIAN DATA SET



RECOMMENDED DATA ELEMENTS FOR A MINIMAL PHYSICIAN DATA SET

The MDS Workgroup identified the data elements listed below to be included in a uniform, minimal physician data set. The workgroup believes that many of the elements identified fall into one of three categories: (1) data currently provided by state boards as part of their regular transmissions of licensure data; (2) data that is or may be obtained by the FSMB through data sharing agreements with other organizations; or (3) unique and standardized data that state boards can obtain by adding questions to their renewal application or by asking questions as part of a separate questionnaire tied directly to the renewal process.

| Data Element | Source and Rationale (when applicable) |
|--|---|
| Licensure status (active or inactive) | Currently provided by state boards. |
| Date of birth (mm/dd/yy) | Currently provided by state boards. FSMB has the date of birth for more than 96% of physicians with an active license. |
| Medical school graduated | Currently provided by state boards. FSMB has medical school matriculation data for more than 99% of physicians with an active license. |
| Medical school graduation year | Currently provided by state boards. FSMB has the medical school graduation year for more than 98% of physicians with an active license. |
| Specialty and subspecialty board certification | Obtained by FSMB. Specialty and subspecialty certification data is currently provided to FSMB by ABMS on a daily basis. FSMB is working with AOA to obtain access to their specialty and subspecialty certification data. |
| Maintenance of Certification and Osteopathic Continuous Certification | Obtained by FSMB from the ABMS and the AOA as the information becomes available. |
| Maintenance of Licensure | Provided by state boards as MOL programs are adopted and implemented. |
| Employment status | State board question. Physicians may hold an active license but be retired. |
| Provide clinical or patient care. | State board question. Physician may hold a position in a field of medicine, but do not provide direct patient care (important for reentry decisions by state boards). |
| If <u>no</u> , number of years since provided clinical or patient care | State board question. Provides important input for physician re-entry. |
| Areas of practice | State board question. This question provides input on the true areas of practice for a physician (primary care, dermatology, surgery). |
| Practice settings | State board question. Physician can practice in different settings (e.g., clinic or hospital). |
| Number of weeks worked during the past year | State board question. This information will help state boards better understand the level of participation among licensed physicians in their jurisdictions. |
| Average number of hours worked per week by activity | State board question. Some physicians are involved in direct patient care and work as an administrator and conduct research during the same week. |
| Clinical locations | State board question. Some physicians may work in more than one location. |
| Hours per week providing patient care by location | State board question. Some physicians may work varying amounts in more than one location. |
| Gender | State board question. FSMB to supplement with AAMC, AACOM, and ECFMG data. |
| Race (optional) | State board question. FSMB to supplement with AAMC, AACOM, and ECFMG data. |
| Ethnicity (optional) | State board question. FSMB to supplement with AAMC, AACOM, and ECFMG data. |
| Languages spoken (optional) | State board question. |

RECOMMENDED QUESTIONS FOR A MINIMAL PHYSICIAN DATA SET

The MDS Workgroup strongly recommends that the physician workforce questions presented in this section be added to state boards' renewal applications or be a separate questionnaire tied directly to the renewal process. The questions serve as a guide for standardizing a minimal set of data for physicians across all state boards.

1. What is your current employment status?
 - Actively working in a position that requires a medical license
 - Actively working in a field other than medicine
 - Not currently working
 - Retired

2. Are you currently providing direct clinical or patient care on a regular basis?
 - Yes
 - No
 - a. If no, how many years has it been since you provided clinical or patient care?
 - Less than 2 years
 - 2 to 5 years
 - 5 to 10 years
 - More than 10 years

3. Which of the following best describes the area(s) of practice in which you spend most of your professional time:

| Area of Practice | Principal | Secondary | Completed Accredited Residency Program or Fellowship |
|-----------------------------------|-----------|-----------|--|
| Adolescent Medicine | 0 | 0 | 0 |
| Anesthesiology | 0 | 0 | 0 |
| Allergy and Immunology | 0 | 0 | 0 |
| Cardiology | 0 | 0 | 0 |
| Child Psychiatry | 0 | 0 | 0 |
| Colon and Rectal Surgery | 0 | 0 | 0 |
| Critical Care Medicine | 0 | 0 | 0 |
| Dermatology | 0 | 0 | 0 |
| Endocrinology | 0 | 0 | 0 |
| Emergency Medicine | 0 | 0 | 0 |
| Family Medicine/General Practice | 0 | 0 | 0 |
| Gastroenterology | 0 | 0 | 0 |
| Geriatric Medicine | 0 | 0 | 0 |
| Gynecology Only | 0 | 0 | 0 |
| Hematology & Oncology | 0 | 0 | 0 |
| Infectious Diseases | 0 | 0 | 0 |
| Internal Medicine (General) | 0 | 0 | 0 |
| Nephrology | 0 | 0 | 0 |
| Neurological Surgery | 0 | 0 | 0 |
| Neurology | 0 | 0 | 0 |
| Obstetrics and Gynecology | 0 | 0 | 0 |
| Occupational Medicine | 0 | 0 | 0 |
| Ophthalmology | 0 | 0 | 0 |
| Orthopedic Surgery | 0 | 0 | 0 |
| Other Surgical Specialties | 0 | 0 | 0 |
| Otolaryngology | 0 | 0 | 0 |
| Pathology | 0 | 0 | 0 |
| Pediatrics (General) | 0 | 0 | 0 |
| Pediatrics Subspecialties | 0 | 0 | 0 |
| Physical Med. & Rehab. | 0 | 0 | 0 |
| Plastic Surgery | 0 | 0 | 0 |
| Preventive Medicine/Public Health | 0 | 0 | 0 |
| Psychiatry | 0 | 0 | 0 |
| Pulmonology | 0 | 0 | 0 |
| Radiation Oncology | 0 | 0 | 0 |
| Radiology | 0 | 0 | 0 |
| Rheumatology | 0 | 0 | 0 |
| Surgery (General) | 0 | 0 | 0 |
| Thoracic Surgery | 0 | 0 | 0 |
| Urology | 0 | 0 | 0 |
| Vascular Surgery | 0 | 0 | 0 |
| Other Specialties | 0 | 0 | 0 |

4. Which of the following categories best describes your primary and secondary practice or work setting(s) where you work the most hours each week?

| Practice Setting | Principal | Secondary |
|--|-----------------------|-----------------------|
| Office/Clinic—Solo Practice | <input type="radio"/> | <input type="radio"/> |
| Office/Clinic—Partnership | <input type="radio"/> | <input type="radio"/> |
| Office/Clinic—Single Specialty Group | <input type="radio"/> | <input type="radio"/> |
| Office/Clinic—Multi Specialty Group | <input type="radio"/> | <input type="radio"/> |
| Hospital—Inpatient | <input type="radio"/> | <input type="radio"/> |
| Hospital—Outpatient | <input type="radio"/> | <input type="radio"/> |
| Hospital—Emergency Department | <input type="radio"/> | <input type="radio"/> |
| Hospital—Ambulatory Care Center | <input type="radio"/> | <input type="radio"/> |
| Federal Government Hospital | <input type="radio"/> | <input type="radio"/> |
| Research Laboratory | <input type="radio"/> | <input type="radio"/> |
| Medical School | <input type="radio"/> | <input type="radio"/> |
| Nursing Home or Extended Care Facility | <input type="radio"/> | <input type="radio"/> |
| Home Health Setting | <input type="radio"/> | <input type="radio"/> |
| Hospice Care | <input type="radio"/> | <input type="radio"/> |
| Federal/State/Community Health Center(s) | <input type="radio"/> | <input type="radio"/> |
| Local Health Department | <input type="radio"/> | <input type="radio"/> |
| Telemedicine | <input type="radio"/> | <input type="radio"/> |
| Volunteer in a Free Clinic | <input type="radio"/> | <input type="radio"/> |
| Other (specify): | <input type="radio"/> | <input type="radio"/> |

5. How many weeks did you work in medical related positions in the past 12 months?

6. For all medical related positions held in (insert state name), indicate the average number of hours per week spent on each major activity:

| | |
|-------------------------------------|------------------|
| Clinical or patient care | _____ hours/week |
| Research | _____ hours/week |
| Teaching/Education | _____ hours/week |
| Administration | _____ hours/week |
| Volunteering (medical related only) | _____ hours/week |
| Other (specify): _____ | _____ hours/week |

Another approach to obtaining this information would be to ask licensees: (1) number of weeks worked in the past 12 months, (2) average number of hours worked per week, and (3) the percentage of time per week spent on each major activity (e.g., clinical or patient care, research etc.).

7. What is the location of the site(s) where you spend most of your time providing direct clinical or patient care? Please enter the complete address for up to three locations and your direct patient care hours per week at each site.

(The workgroup strongly recommends collecting full addresses if all possible, but zip codes only would be acceptable for a minimal data set.)

Principal Location Address

| | | |
|---|--------|-----------------|
| _____ | | |
| Number | Street | |
| _____ | | |
| City/Town | State | Zip Code: □□□□□ |
| Direct patient care hours per week at site: _____ | | |

Second Location Address

| | | |
|---|--------|-----------------|
| _____ | | |
| Number | Street | |
| _____ | | |
| City/Town | State | Zip Code: □□□□□ |
| Direct patient care hours per week at site: _____ | | |

Third Location Address

| | | |
|---|--------|-----------------|
| _____ | | |
| Number | Street | |
| _____ | | |
| City/Town | State | Zip Code: □□□□□ |
| Direct patient care hours per week at site: _____ | | |

8. What is your sex?

- Male
- Female

9. What is your race? (1 or more categories may be selected)—Recommended as Optional

- White
- Black or African American
- American Indian or Alaska Native
- Asian
- Native Hawaiian/Other Pacific Islander
- Other (specify)

The workgroup acknowledges that this is a condensed list and state boards may choose to use more detailed response sets (e.g., HHS Data Standards for Race and US Census Bureau Race Categories).

10. Ethnicity: Are you Hispanic, Latino/a, or of Spanish origin?

(1 or more categories may be selected)—Recommended as Optional

- No
- Yes, Mexican, Mexican American, Chicano/a
- Yes, Puerto Rican
- Yes, Cuban
- Yes, Another Hispanic, Latino/a, or of Spanish origin (specify)

11. Do you speak a language other than English at home? (optional)

- a. Yes
- b. No

12. What is this language? (if you answered Yes to #11)

- a. Spanish
- b. Other Language (identify)

CONCLUSION

The MDS Workgroup believes that state medical boards can play a vital role in helping to accurately determine the size, distribution and demographic make-up of the physician workforce in the United States. The type of medicine physicians practice and how the services they provide impact patients in their areas is just as important and better data is needed on the geographic distribution of physician supply to target state and federal resources designed to help ensure access. The MDS Workgroup believes that state boards have a unique opportunity to contribute to accurate workforce planning by collecting physician demographic and practice information at the time of license renewal. Uniformity of a basic set of questions asked across multiple jurisdictions at the time of license renewal would yield a better understanding of whether the supply of physicians can meet the needs of a growing and aging population.

The MDS Workgroup recommends that the 2012 FSMB House of Delegates support and adopt the recommended framework for a uniform minimal physician data set. It is recognized that there may be challenges to implementation of a minimal physician data set. However, the MDS Workgroup believes that the framework is feasible, reasonable, consistent with the resolution adopted by FSMB's House of Delegates in May 2011, and suitable for use by state medical boards. Furthermore, the MDS Workgroup believes that the FSMB can and should commit to a leadership role by providing state boards resources to help them implement a minimal physician data set.

REFERENCES

- ⁱ *H.R. 4872, Reconciliation Act of 2010 (Final Health Care Legislation)*. s.l. : Congressional Budget Office, 2010.
- ⁱⁱ *Projections of the Population and Components of Change for the United States: 2010 to 2050 (NP2008-T1)* . s.l. : Population Division, U.S. Census Bureau, 2008.
- ⁱⁱⁱ Cohn, D’Vera and Taylor, Paul. *Baby Boomers Approach Age 65 -- Glumly: Survey Findings about America's Largest Generation*. s.l. : Pew Research Center, 2010.
- ^{iv} *Projections of the Population by Selected Age Groups and Sex for the United States: 2010 to 2050 (NP2008-T2)*. s.l.: Population Division, U.S. Census Bureau, 2008.
- ^v *Physician Shortages to Worsen Without Increases in Residency Training*. s.l. : AAMC Center for Workforce Studies, 2010.
- ^{vi} Young A, Chaudhry H, Rhyne J, Dugan M. A Census of Actively Licensed Physicians in the United States, 2010. *Journal of Medical Regulation*. 2010-11, Vol. 96 (4).

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

AGENDA REQUEST FORM

| | | | |
|---|---|--|------|
| 1) Name and Title of Person Submitting the Request: Joshua Archiquette, Executive Staff Assistant | | 2) Date When Request Submitted: 12/2/13 Items will be considered late if submitted after 12:00 p.m. and less than 8 work days before the meeting. | |
| 3) Name of Board, Committee, Council, Sections: Medical Examining Board | | | |
| 4) Meeting Date: 1/15/2013 | 5) Attachments: <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes | 6) How should the item be titled on the agenda page? FSMB Matters FSMB's 102 nd Annual Meeting – April 24-26, 2014 in Denver, Colorado | |
| 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 type="checkbox"/> No | 9) Name of Case Advisor(s), if required: | |
| 10) Describe the issue and action that should be addressed: The Board will discuss delegating member(s) and approve travel to attend the FSMB's 102 nd annual meeting on April 24-26, 2014 in Denver Colorado | | | |
| 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: 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. | | | |



October 28, 2013

Dear Colleagues:

Preparations are underway for FSMB's 2014 Annual Meeting scheduled for April 24-26 in Denver, Colorado. The FSMB's House of Delegates (HOD) business meeting is held on the last day of the Annual Meeting. FSMB member board participation at the HOD meeting is extremely important because it is the boards' unique opportunity to gain greater insight into the FSMB's work and to contribute to the organization's policymaking process. The role of the voting delegate in that process is especially important because the delegate represents his/her state medical board on matters of significance to the board and elects FSMB Fellows to assist in carrying out the FSMB's work.

In anticipation of the HOD business meeting, we ask that you consider which of your board members will be best suited to serve as your voting delegate.

In order for the voting delegate to serve in a truly representative capacity, the delegate is asked to fulfill a number of responsibilities.

Before the HOD meeting, the voting delegate is asked to:

- Become familiar with the structure, purpose and history of the FSMB HOD as well as FSMB's policymaking and election processes
- Attend meetings of the state medical board the delegate represents to gain early information on statewide and national issues to be addressed at the HOD meeting
- Review all pre-meeting materials
- **Participate in a Voting Delegate Webinar on March 13, 2014 from 3:00-4:00 pm CDT**
- **Attend the Candidates Forum and Reference Committee meeting at the Annual Meeting and provide Reference Committee testimony as necessary**
- Network with colleagues at the Annual Meeting for additional information and perspectives on issues

During the meeting, the voting delegate is asked to:

- Follow the meeting rules as outlined by the Rules Committee
- Represent the position of the delegate's board during discussions as necessary
- Vote at the time requested

Following the meeting, the voting delegate is asked to:

- Report the results of the HOD meeting to the delegate's board
- Remain current on statewide and national issues affecting medical regulation in preparation for the next HOD meeting

As you can see, the role of the voting delegate should not be taken lightly. We therefore encourage you to give careful consideration in the selection of the individual who will be your representative at our 2014 meeting.

Sincerely,

Jon V. Thomas, MD, MBA
Chair

Humayun J. Chaudhry, DO, MACP
President and CEO

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**TRAVEL REIMBURSEMENT GUIDELINES
FOR VOTING DELEGATES
ATTENDING THE FSMB ANNUAL MEETING**

The Federation of State Medical Boards of the United States, Inc. (FSMB) will reimburse board presidents/chairs up to \$1,800 for travel, lodging and meal expenses incurred to attend the FSMB's Annual House of Delegates Meeting according to the Travel Reimbursement Guidelines. In the event the president/chair cannot attend the meeting, an alternate member of the medical board may be selected by the board president/chair to attend as the designated voting delegate.

Only board members or associate members who participate as the voting delegate at the House of Delegates meeting will be eligible for reimbursement of expenses under this policy.

The Annual Meeting registration fee will be waived.

AIR TRAVEL

The FSMB will reimburse the cost of one coach class, round trip airline ticket for the voting delegate attending the annual meeting. **Tickets must be booked 14 days prior to travel through the FSMB's authorized travel agency and billed directly to the corporate account. Tickets booked less than 14 days prior to travel or booked elsewhere will not be reimbursed.**

However, if the voting delegate has access to a lower fare (such as a government rate) through another source, the FSMB will reimburse that airfare provided he/she obtains a written quote from the FSMB's travel agency for comparison. **The FSMB's Director of Meetings & Travel must be notified prior to making these alternate reservations.**

Should the voting delegate choose a flight itinerary at a higher fare than a comparable fare offered by the FSMB's travel agency, he/she will be responsible for the additional expense regardless of whether the \$1,800 expense cap is reached.

Airline Class of Service

All air travel must be in coach class. Travelers are expected to use the lowest logical airfare available (see below for definition) regardless of personal participation in a frequent flyer program. **Tickets will be nonrefundable and nontransferable.**

Upgrades for Domestic Air Travel

Upgrade coupons may be used only if they do not disqualify the traveler from a cheaper fare and are only allowed at the traveler's personal expense.

Personal Stopovers

Travelers must pay for any personal stopovers which increase airfare.

Baggage Fees

The FSMB will reimburse airline charges for up to two checked bags. Overweight baggage fees will not be reimbursed.

Preferred Seating

If traveler's seating preference is not available within the "base airfare", the FSMB will reimburse up to \$75 roundtrip to purchase such seating.

Changes to Tickets

Changes to tickets must be pre-approved by FSMB's Director of Meetings & Travel. Any additional fare or fee resulting from the change (including for standby travel on an earlier flight) will be at the traveler's expense unless the FSMB is requesting the traveler to make the change.

Lowest Airfare Definition

Travelers are expected to book the lowest logical airfare as determined by the travel agency based on the following parameters.

Negotiated Airfares - This could include designated airlines for certain routes, with which the Federation has a negotiated rate.

Routing - Routing requires no more than one stop with one change of plane for each way of a round trip. Routing does not increase the one-way total elapsed trip time (origin to destination) by more than 2 hours.

Time Window - Departure/arrival must be no more than 1 ½ hours before or after requested time for flights of 4 or more hours and 1 hour for flights less than 4 hours.

GROUND TRANSPORTATION

If using rail or personal automobile, the total expense for such travel may not exceed the cost of prevailing coach airfare.

Reimbursement for use of personal autos will be at the prevailing IRS standard mileage rate plus fees for parking and tolls. Other auto expenses (violation tickets, maintenance) are not reimbursable.

Reasonable cab fares and transfers to and from the airport will be reimbursed. **Rental car expenses are not reimbursable.**

LODGING

In order to take advantage of the FSMB's scholarship, the Voting Delegate must stay at the host hotel. Hotel costs will be reimbursed at the host hotel's single convention rate for up to **four nights from Wednesday through Saturday nights.**

MEALS & INCIDENTALS

Meals (**when not provided**) and incidentals (e.g., tips, phone calls) will be reimbursed up to \$100 per day from Wednesday through Sunday. Consumption of alcohol is at the traveler's personal risk and the FSMB expects the traveler to act responsibly and avoid intoxication.

Receipts for all meals are required. Itemized restaurant receipts should be submitted. Credit card signature receipts alone may not meet the requirements of this policy. The FSMB does not reimburse on a per diem basis.

Excessive phone calls, in terms of number or length, will not be reimbursed.

MISCELLANEOUS EXPENSES

Miscellaneous personal and business expenses are not reimbursable. These include:

- a) expense charges for family members or guests;
- b) expenses incurred for business related to other organizations;
- c) movies, gift shop purchases, dry cleaning/laundry
- d) Continuing Medical Education fees

Any such charges should be deducted when completing your reimbursement form.

SPECIAL TRAVEL ACCOMMODATIONS

Individuals with documented disabilities as defined under the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) may request special travel accommodations. Individuals requesting special accommodations must provide appropriate documentation to support the request. Requests will be evaluated on an individual basis.

The ADAAA and accompanying regulations define a person with a disability as someone with a physical or mental impairment that substantially limits one or more major life activities; or (2) has a record of such an impairment; or (3) is regarded as having such an impairment. The purpose of documentation is to validate that the individual is covered under the ADAAA as a disabled individual. The purpose of accommodations is to provide equal access for individuals traveling on behalf of FSMB.

REIMBURSEMENT FORMS

The FSMB Request for Reimbursement of Travel Expenses should be completed and submitted to the FSMB's Director of Meetings and Travel within **60 days** following completion of travel. Requests for extensions must be in writing. Reimbursement will not be granted for requests received after 60 days unless a request for an extension has been submitted. **Receipts for all individual expenses exceeding \$25 must be attached to the reimbursement request.**

MEMORANDUM

DATE: October 29, 2013

TO: **Presidents/Chairs and Executive Directors
Member Medical and Osteopathic Boards**

FROM: Deanne Dooley
Executive Administrative Assistant
Meeting and Travel Planning

RE: **Scholarship Program for the
FSMB 2014 House of Delegates and Annual Meeting**

Preparations are underway for FSMB's 102nd Annual Meeting to be held April 24 – April 26, 2014, at the Hyatt Regency Denver in Denver, CO.

Reimbursement up to \$1,800 in travel expenses will be provided for each member board's president/chair attending as the voting delegate at the FSMB's House of Delegates Meeting on Saturday, April 26, 2014. If the president/chair is unable to participate, an alternate member of the medical board may be selected by the president/chair to attend as the designated voting delegate. **Please see the attached letter from the FSMB's Chair and President/CEO stressing the importance of the role of the voting delegate.**

The FSMB will also reimburse the executive director of each member board up to \$1,800 for expenses incurred in relation to his/her attendance at the Annual Meeting. In the event the executive director cannot participate, the president/chair may select another senior staff person to attend in the executive director's place.

Reimbursement for the voting delegate and the executive director will be made in accordance with the attached guidelines. Please complete the attached Scholarship Response Form identifying your board's scholarship recipients. **The deadline for returning the response form is February 3, 2014.** Upon receipt of the form, scholarship information and travel policies will be sent to the recipients.

Annual membership dues for member boards must be paid in full in order for both the voting delegate and the executive director to take advantage of the scholarship opportunity. A draft agenda for the 2014 Annual Meeting is posted on the FSMB's website at www.fsmb.org. Should you have any questions, you may reach me at 817-868-4086.

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WISCONSIN OPEN MEETINGS LAW

A COMPLIANCE GUIDE

August 2010

**DEPARTMENT OF JUSTICE
ATTORNEY GENERAL J.B. VAN HOLLEN**



Effective citizen oversight of the workings of government is essential to our democracy and promotes confidence in it. Public access to meetings of governmental bodies is a vital aspect of this principle.

Promoting compliance with Wisconsin's open meetings law by raising awareness and providing education and information about the law is an ongoing part of the mission of the Wisconsin Department of Justice. Citizens and public officials who understand their rights and responsibilities under the law will be better equipped to advance Wisconsin's policy of openness in government.

Wisconsin Open Meetings Law: A Compliance Guide is not a comprehensive interpretation of the open meetings law. Its aim is to provide a workable understanding of the law by explaining fundamental principles and addressing recurring questions. Government officials and others seeking legal advice about the application of the open meetings law to specific factual situations should direct questions to their own legal advisors.

This Compliance Guide is also available on the Wisconsin Department of Justice website at www.doj.state.wi.us, to download, copy, and share. The website version contains links to many of the opinions and letters cited in the text of the Guide.

As Attorney General, I cannot overstate the importance of fully complying with the open meetings law and fostering a policy of open government for all Wisconsin citizens. To that end, I invite all government entities to contact the Department of Justice whenever our additional assistance can be of help to you.

J.B. Van Hollen
Attorney General
August 2010

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WISCONSIN OPEN MEETINGS LAW¹

I. POLICY OF THE OPEN MEETINGS LAW.

The State of Wisconsin recognizes the importance of having a public informed about governmental affairs. The state's open meetings law declares that:

In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

Wis. Stat. § 19.81(1).²

In order to advance this policy, the open meetings law requires that “all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.” Wis. Stat. § 19.81(2). There is thus a presumption that meetings of governmental bodies must be held in open session. *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 97, 398 N.W.2d 154 (1987). Although there are some exemptions allowing closed sessions in specified circumstances, they are to be invoked sparingly and only where necessary to protect the public interest. The policy of the open meetings law dictates that governmental bodies convene in closed session only where holding an open session would be incompatible with the conduct of governmental affairs. “Mere government inconvenience is . . . no bar to the requirements of the law.” *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 678, 239 N.W.2d 313 (1976).

The open meetings law explicitly provides that all of its provisions must be liberally construed to achieve its purposes. Wis. Stat. § 19.81(4); *St. ex rel. Badke v. Greendale Village Bd.*, 173 Wis. 2d 553, 570, 494 N.W.2d 408 (1993); *State ex rel. Lawton v. Town of Barton*, 2005 WI App 16, ¶ 19, 278 Wis. 2d 388, 692 N.W.2d 304 (“The legislature has issued a clear mandate that we are to vigorously and liberally enforce the policy behind the open meetings law”). This rule of liberal construction applies in all situations, except enforcement actions in which forfeitures are sought. Wis. Stat. § 19.81(4). Public officials must be ever mindful of the policy of openness and the rule of liberal construction in order to ensure compliance with both the letter and spirit of the law. *State ex rel. Citizens for Responsible Development v. City of Milton*, 2007 WI App 114, ¶ 6, 300 Wis. 2d 649, 731 N.W.2d 640 (“The legislature has made the policy choice that, despite the efficiency advantages of secret government, a transparent process is favored”).

II. WHEN DOES THE OPEN MEETINGS LAW APPLY?

The open meetings law applies to every “meeting” of a “governmental body.” Wis. Stat. § 19.83. The terms “meeting” and “governmental body” are defined in Wis. Stat. § 19.82(1) and (2).

¹The 2009 Open Meetings Law Compliance Guide was prepared by Assistant Attorneys General Thomas C. Bellavia and Bruce A. Olsen. The text reflects the continuing contributions of former Assistant Attorneys General Alan M. Lee and Mary Woolsey Schlaefter to earlier editions of the Guide. The assistance of reviewers Sandra L. Tarver, Steven P. Means, Kevin Potter, Kevin St. John, and Raymond P. Taffora, and the technical and administrative support of Connie L. Anderson, Amanda J. Welte, and Sara J. Paul is gratefully acknowledged.

²The text of this, and all other, sections of the open meetings law appears in Appendix A.

A. Definition Of “Governmental Body.”

1. Entities that are governmental bodies.

a. State or local agencies, boards, and commissions.

The definition of “governmental body” includes a “state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order[.]” Wis. Stat. § 19.82(1). This definition is broad enough to include virtually any collective governmental entity, regardless of what it is labeled. It is important to note that a governmental body is defined primarily in terms of the manner in which it is created, rather than in terms of the type of authority it possesses. Purely advisory bodies are therefore subject to the law, even though they do not possess final decision making power, as long as they are created by constitution, statute, ordinance, rule, or order. *See State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979).

The words “constitution,” “statute,” and “ordinance,” as used in the definition of “governmental body,” refer to the constitution and statutes of the State of Wisconsin and to ordinances promulgated by a political subdivision of the state. The definition thus includes state and local bodies created by Wisconsin’s constitution or statutes, including condemnation commissions created by Wis. Stat. § 32.08, as well as local bodies created by an ordinance of any Wisconsin municipality. It does not, however, include bodies created solely by federal law or by the law of some other sovereign.

State and local bodies created by “rule or order” are also included in the definition. The term “rule or order” has been liberally construed to include any directive, formal or informal, creating a body and assigning it duties. 78 Op. Att’y Gen. 67, 68-69 (1989). This includes directives from governmental bodies, presiding officers of governmental bodies, or certain governmental officials, such as county executives, mayors, or heads of a state or local agency, department or division. *See* 78 Op. Att’y Gen. 67. A group organized by its own members pursuant to its own charter, however, is not created by any governmental directive and thus is not a governmental body, even if it is subject to governmental regulation and receives public funding and support.³ The relationship of affiliation between the University of Wisconsin Union and various student clubs thus is not sufficient to make the governing board of such a club a governmental body. Penkalski Correspondence, May 4, 2009.

The Wisconsin Attorney General has concluded that the following entities are “governmental bodies” subject to the open meetings law:

State or local bodies created by constitution, statute, or ordinance:

- A municipal public utility managing a city-owned public electrical utility. 65 Op. Att’y Gen. 243 (1976).
- Departments of formally constituted subunits of the University of Wisconsin system or campus. 66 Op. Att’y Gen. 60 (1977).
- A town board, but not an annual or special town meeting of town electors. 66 Op. Att’y Gen. 237 (1977).
- A county board of zoning adjustment authorized by Wis. Stat § 59.99(3) (1983) (now Wis. Stat. § 59.694(1)). Gaylord Correspondence, June 11, 1984.

³But see the discussion of quasi-governmental corporations in section II.A.1.d. of this Guide.

- A public inland lake protection and rehabilitation district established by a county or municipality, pursuant to Wis. Stat. §§ 33.21 to 33.27. DuVall Correspondence, November 6, 1986.

State or local bodies created by resolution, rule, or order:

- A committee appointed by the school superintendent to consider school library materials. Staples Correspondence, February 10, 1981.
- A citizen’s advisory group appointed by the mayor. Funkhouser Correspondence, March 17, 1983.
- An advisory committee appointed by the Natural Resources Board, the Secretary of the Department of Natural Resources, or a District Director, Bureau Director or Property Manager of that department. 78 Op. Att’y Gen. 67.
- A consortium of school districts created by a contract between districts; a resolution is the equivalent of an order. I-10-93, October 15, 1993.
- An industrial agency created by resolution of a county board under Wis. Stat. § 59.071. I-22-90, April 4, 1990.
- A deed restriction committee created by resolution of a common council. I-34-90, May 25, 1990.
- A school district’s strategic-planning team whose creation was authorized and whose duties were assigned to it by the school board. I-29-91, October 17, 1991.
- A citizen’s advisory committee appointed by a county executive. Jacques Correspondence, January 26, 2004.
- An already-existing numerically definable group of employees of a governmental entity, assigned by the entity’s chief administrative officer to prepare recommendations for the entity’s policy-making board, when the group’s meetings include the subject of the chief administrative officer’s directive. Tylka Correspondence, June 8, 2005.
- A Criminal Justice Study Commission created by the Wisconsin Department of Justice, the University of Wisconsin Law School, the State Bar of Wisconsin, and the Marquette University Law School. Lichstein Correspondence, September 20, 2005.
- Grant review panels created by a consortium which was established pursuant to an order of the Wisconsin Commissioner of Insurance. Katayama Correspondence, January 20, 2006.
- A joint advisory task force established by a resolution of a Wisconsin town board and a resolution of the legislature of a sovereign Indian tribe. I-04-09, September 28, 2009.
- A University of Wisconsin student government committee, council, representative assembly, or similar collective body that has been created and assigned governmental responsibilities pursuant to Wis. Stat. § 36.09(5). I-05-09, December 17, 2009.

Any entity that fits within the definition of “governmental body” must comply with the requirements of the open meetings law. In most cases, it is readily apparent whether a particular body fits within the definition. On occasion, there is some doubt. Any doubts as to the applicability of the open meetings law should be resolved in favor of complying with the law’s requirements.

b. Subunits.

A “formally constituted subunit” of a governmental body is itself a “governmental body” within the definition in Wis. Stat. § 19.82(1). A subunit is a separate, smaller body created by a parent body and composed exclusively of members of the parent body. 74 Op. Att’y Gen. 38, 40 (1985). If, for example, a fifteen member county board appoints a committee consisting of five members of the county board, that committee would be considered a “subunit” subject to the open meetings law. This is true despite the fact that the five-person committee would be smaller than a quorum of the county board. Even a committee with only two members is

considered a “subunit,” as is a committee that is only advisory and that has no power to make binding decisions. Dziki Correspondence, December 12, 2006.

Groups that include both members and non-members of a parent body are not “subunits” of the parent body. Such groups nonetheless frequently fit within the definition of a “governmental body”—*e.g.*, as advisory groups to the governmental bodies or government officials that created them.

c. State Legislature.

Generally speaking, the open meetings law applies to the state Legislature, including the senate, assembly, and any committees or subunits of those bodies. Wis. Stat. § 19.87. The law does not apply to any partisan caucus of the senate or assembly. Wis. Stat. § 19.87(3). The open meetings law also does not apply where it conflicts with a rule of the Legislature, senate, or assembly. Wis. Stat. § 19.87(2). Additional restrictions are set forth in Wis. Stat. § 19.87.

d. Governmental or quasi-governmental corporations.

The definition of “governmental body” also includes a “governmental or quasi-governmental corporation,” except for the Bradley sports center corporation. Wis. Stat. § 19.82(1). The term “governmental corporation” is not defined in either the statutes or the case law interpreting the statutes. It is clear, however, that a “governmental corporation” must at least include a corporation established for some public purpose and created directly by the state Legislature or by some other governmental body pursuant to specific statutory authorization or direction. *See* 66 Op. Att’y Gen. 113, 115 (1977).

The term “quasi-governmental corporation” also is not defined in the statutes, but its definition was recently discussed by the Wisconsin Supreme Court in *State v. Beaver Dam Area Dev. Corp.* (“*BDADC*”), 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295. In that decision, the Court held that a “quasi-governmental corporation” does not have to be *created* by the government or *per se* governmental, but rather is a corporation that significantly resembles a governmental corporation in function, effect, or status. *Id.*, ¶¶ 33-36. The Court further held that each case must be decided on its own particular facts, under the totality of the circumstances and set forth a non-exhaustive list of factors to be examined in determining whether a particular corporation sufficiently resembles a governmental corporation to be deemed quasi-governmental, while emphasizing that no single factor is outcome determinative. *Id.*, ¶¶ 7-8, 63 n.14, and 79. The factors set out by the Court in *BDADC* fall into five basic categories: (1) the extent to which the private corporation is supported by public funds; (2) whether the private corporation serves a public function and, if so, whether it also has other, private functions; (3) whether the private corporation appears in its public presentations to be a governmental entity; (4) the extent to which the private corporation is subject to governmental control; and (5) the degree of access that government bodies have to the private corporation’s records. *Id.*, ¶ 62.

In adopting this case-specific, multi-factored “function, effect or status” standard, the Wisconsin Supreme Court followed a 1991 Attorney General opinion. *See* 80 Op. Att’y Gen. 129, 135 (1991) (Milwaukee Economic Development Corporation, a Wis. Stat. ch. 181 corporation organized by two private citizens and one city employee, is a quasi-governmental corporation); *see also* Kowalczyk Correspondence, March 13, 2006 (non-stock, non-profit corporations established for the purpose of providing emergency medical or fire department services for participating municipalities are quasi-governmental corporations). Prior to 1991, however, Attorney General opinions on this subject emphasized some of the more formal aspects of quasi-governmental corporations. Those opinions should now be read in light of the *BDADC* decision. *See* 66 Op. Att’y Gen. 113 (volunteer fire department organized under Wis. Stat. ch. 181 is not a quasi-governmental corporation); 73 Op. Att’y Gen. 53 (1984) (Historic Sites Foundation organized under Wis. Stat. ch. 181 is not a quasi-governmental corporation); 74 Op. Att’y Gen. 38 (corporation established to provide financial support to public broadcasting stations organized under Wis. Stat. ch. 181 is not a quasi-governmental corporation). Geyer Correspondence, February 26, 1987 (Grant County Economic Development Corporation organized by private individuals under Wis. Stat. ch. 181 is not a quasi-governmental

corporation, even though it serves a public purpose and receives more than fifty percent of its funding from public sources).

In March 2009, the Attorney General issued an informal opinion which analyzed the *BDADC* decision in greater detail and expressed the view that, out of the numerous factors discussed in that decision, particular weight should be given to whether a corporation serves a public function and has any private functions. I-02-09, March 19, 2009. When a private corporation contracts to perform certain services for a governmental body, the key considerations in determining whether the corporation becomes quasi-governmental are whether the corporation is performing a portion of the governmental body's public functions or whether the services provided by the corporation play an integral part in any stage—including the purely deliberative stage—of the governmental body's decision-making process. *Id.*

2. Entities that are not governmental bodies.

a. Governmental offices held by a single individual.

The open meetings law does not apply to a governmental department with only a single member. *Plourde v. Habegger*, 2006 WI App 147, 294 Wis. 2d 746, 720 N.W.2d 130. Because the term “body” connotes a group of individuals, a governmental office held by a single individual likewise is not a “governmental body” within the meaning of the open meetings law. Thus, the open meetings law does not apply to the office of coroner or to inquests conducted by the coroner. 67 Op. Att’y Gen. 250 (1978). Similarly, the Attorney General has concluded that the open meetings law does not apply to an administrative hearing conducted by an individual hearing examiner. Clifford Correspondence, December 2, 1980.

b. Bodies meeting for collective bargaining.

The definition of “governmental body” explicitly excludes bodies that are formed for or meeting for the purpose of collective bargaining with municipal or state employees under Wis. Stat. ch. 111. A body formed exclusively for the purpose of collective bargaining is not subject to the open meetings law. Wis. Stat. § 19.82(1). A body formed for other purposes, in addition to collective bargaining, is not subject to the open meetings law when conducting collective bargaining. Wis. Stat. § 19.82(1). The Attorney General has, however, advised multi-purpose bodies to comply with the open meetings law, including the requirements for convening in closed session, when meeting for the purpose of forming negotiating strategies to be used in collective bargaining. 66 Op. Att’y Gen. 93, 96-97 (1977). The collective bargaining exclusion does not permit any body to consider the final ratification or approval of a collective bargaining agreement in closed session. Wis. Stat. § 19.85(3).

c. Bodies created by the Wisconsin Supreme Court.

The Wisconsin Supreme Court has held that bodies created by the Court, pursuant to its superintending control over the administration of justice, are not governed by the open meetings law. *State ex rel. Lynch v. Dancey*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976). Thus, generally speaking, the open meetings law does not apply to the Court or bodies created by the Court. In the *Lynch* case, for example, the Court held that the former open meetings law, Wis. Stat. § 66.77(1) (1973), did not apply to the Wisconsin Judicial Commission, which is responsible for handling misconduct complaints against judges. Similarly, the Attorney General has indicated that the open meetings law does not apply to: the Board of Attorneys Professional Responsibility, OAG 67-79 (July 31, 1979) (unpublished opinion); the Board of Bar Examiners, Kosobucki Correspondence, September 6, 2006; or the monthly judicial administration meetings of circuit court judges, conducted under the authority of the Court's superintending power over the judiciary. Constantine Correspondence, February 28, 2000.

d. Ad hoc gatherings.

Although the definition of a governmental body is broad, some gatherings are too loosely constituted to fit the definition. Thus, *Conta* holds that the directive that creates the body must also “confer[] collective power and define[] when it exists.” 71 Wis. 2d at 681. *Showers* adds the further requirement that a “meeting” of a governmental body takes place only if there are a sufficient number of members present to determine the governmental body’s course of action. 135 Wis. 2d at 102. In order to determine whether a sufficient number of members are present to determine a governmental body’s course of action, the membership of the body must be numerically definable. The Attorney General’s Office thus has concluded that a loosely constituted group of citizens and local officials instituted by the mayor to discuss various issues related to a dam closure was not a governmental body, because no rule or order defined the group’s membership, and no provision existed for the group to exercise collective power. Godlewski Correspondence, September 24, 1998.

The definition of a “governmental body” is only rarely satisfied when groups of a governmental unit’s employees gather on a subject within the unit’s jurisdiction. Thus, for example, the Attorney General concluded that the predecessor of the current open meetings law did not apply when a department head met with some or even all of his or her staff. 57 Op. Att’y Gen. 213, 216 (1968). Similarly, the Attorney General’s Office has advised that the courts would be unlikely to conclude that meetings between the administrators of a governmental agency and the agency’s employees, or between governmental employees and representatives of a governmental contractor were “governmental bodies” subject to the open meetings law. Peplnjak Correspondence, June 8, 1998. However, where an already-existing numerically definable group of employees of a governmental entity are assigned by the entity’s chief administrative officer to prepare recommendations for the entity’s policy-making board, the group’s meetings with respect to the subject of the directive are subject to the open meetings law. Tylka Correspondence, June 8, 2005.

B. Definition Of “Meeting.”

A “meeting” is defined as:

[T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter

Wis. Stat. § 19.82(2). The statute then excepts the following: an inspection of a public works project or highway by a town board; or inspection of a public works project by a town sanitary district; or the supervision, observation, or collection of information about any drain or structure related to a drain by any drainage board. *Id.*

1. The Showers test.

The Wisconsin Supreme Court has held that the above statutory definition of a “meeting” applies whenever a convening of members of a governmental body satisfies two requirements: (1) there is a purpose to engage in governmental business and (2) the number of members present is sufficient to determine the governmental body’s course of action. *Showers*, 135 Wis. 2d at 102.

a. The purpose requirement.

The first part of the *Showers* test focuses on the purpose for which the members of the governmental body are gathered. They must be gathered to conduct governmental business. *Showers* stressed that “governmental business” refers to any formal or informal action, including discussion, decision or information gathering, on matters within the governmental body’s realm of authority. *Showers*, 135 Wis. 2d at 102-03. Thus, in

Badke, 173 Wis. 2d at 572-74, the Wisconsin Supreme Court held that the village board conducted a “meeting,” as defined in the open meetings law, when a quorum of the board regularly attended each plan commission meeting to observe the commission’s proceedings on a development plan that was subject to the board’s approval. The Court stressed that a governmental body is engaged in governmental business when its members gather to simply hear information on a matter within the body’s realm of authority. *Id.* at 573-74. The members need not actually discuss the matter or otherwise interact with one another to be engaged in governmental business. *Id.* at 574-76. The Court also held that the gathering of town board members was not chance or social because a majority of town board members attended plan commission meetings with regularity. *Id.* at 576. In contrast, the Court of Appeals concluded in *Paulton v. Volkmann*, 141 Wis. 2d 370, 375-77, 415 N.W.2d 528 (Ct. App. 1987), that no meeting occurred where a quorum of school board members attended a gathering of town residents, but did not collect information on a subject the school board had the potential to decide.

b. The numbers requirement.

The second part of the *Showers* test requires that the number of members present be sufficient to determine the governmental body’s course of action on the business under consideration. People often assume that this means that the open meetings law applies only to gatherings of a majority of the members of a governmental body. That is not the case because the power to control a body’s course of action can refer either to the affirmative power to pass a proposal or the negative power to defeat a proposal. Therefore, a gathering of one-half of the members of a body, or even fewer, may be enough to control a course of action if it is enough to block a proposal. This is called a “negative quorum.”

Typically, governmental bodies operate under a simple majority rule in which a margin of one vote is necessary for the body to pass a proposal. Under that approach, exactly one-half of the members of the body constitutes a “negative quorum” because that number against a proposal is enough to prevent the formation of a majority in its favor. Under simple majority rule, therefore, the open meetings law applies whenever one-half or more of the members of the governmental body gather to discuss or act on matters within the body’s realm of authority.

The size of a “negative quorum” may be smaller, however, when a governmental body operates under a super majority rule. For example, if a two-thirds majority is required for a body to pass a measure, then any gathering of more than one-third of the body’s members would be enough to control the body’s course of action by blocking the formation of a two-thirds majority. *Showers* made it clear that the open meetings law applies to such gatherings, as long as the purpose requirement is also satisfied (*i.e.*, the gathering is for the purpose of conducting governmental business). *Showers*, 135 Wis. 2d at 101-02. If a three-fourths majority is required to pass a measure, then more than one-fourth of the members would constitute a “negative quorum,” etc.

2. Convening of members.

When the members of a governmental body conduct official business while acting separately, without communicating with each other or engaging in other collective action, there is no meeting within the meaning of the open meetings law. *Katayama Correspondence*, January 20, 2006. Nevertheless, the phrase “convening of members” in Wis. Stat. § 19.82(2) is not limited to situations in which members of a body are simultaneously gathered in the same location, but may also include other situations in which members are able to effectively communicate with each other and to exercise the authority vested in the body, even if they are not physically present together. Whether such a situation qualifies as a “convening of members” under the open meetings law depends on the extent to which the communications in question resemble a face-to-face exchange.

a. Written correspondence.

The circulation of a paper or hard copy memorandum among the members of a governmental body, for example, may involve a largely one-way flow of information, with any exchanges spread out over a considerable period of time and little or no conversation-like interaction among members. Accordingly, the Attorney General

has long taken the position that such written communications generally do not constitute a “convening of members” for purposes of the open meetings law. Merkel Correspondence, March 11, 1993. Although the rapid evolution of electronic media has made the distinction between written and oral communication less sharp than it once appeared, it is still unlikely that a Wisconsin court would conclude that the circulation of a document through the postal service, or by other means of paper or hard-copy delivery, could be deemed a “convening” or “gathering” of the members of a governmental body for purposes of the open meetings law.

b. Telephone conference calls.

A telephone conference call, in contrast, is very similar to an in-person conversation and thus qualifies as a convening of members. 69 Op. Att’y Gen. 143 (1980). Under the *Showers* test, therefore, the open meetings law applies to any conference call that: (1) is for the purpose of conducting governmental business and (2) involves a sufficient number of members of the body to determine the body’s course of action on the business under consideration. To comply with the law, a governmental body conducting a meeting by telephone conference call must provide the public with an effective means to monitor the conference. This may be accomplished by broadcasting the conference through speakers located at one or more sites open to the public. 69 Op. Att’y Gen. 143, 145.

c. Electronic communications.

Written communications transmitted by electronic means, such as email or instant messaging, also may constitute a “convening of members,” depending on how the communication medium is used. Although no Wisconsin court has applied the open meetings law to these kinds of electronic communications, it is likely that the courts will try to determine whether the communications in question are more like an in-person discussion—*e.g.*, a rapid back-and-forth exchange of viewpoints among multiple members—or more like non-electronic written correspondence, which generally does not raise open meetings law concerns. If the communications closely resemble an in-person discussion, then they may constitute a meeting if they involve enough members to control an action by the body. Krischan Correspondence, October 3, 2000. In addressing these questions, courts are likely to consider such factors as the following: (1) the number of participants involved in the communications; (2) the number of communications regarding the subject; (3) the time frame within which the electronic communications occurred; and (4) the extent of the conversation-like interactions reflected in the communications.

Because the applicability of the open meetings law to such electronic communications depends on the particular way in which a specific message technology is used, these technologies create special dangers for governmental officials trying to comply with the law. Although two members of a governmental body larger than four members may generally discuss the body’s business without violating the open meetings law, features like “forward” and “reply to all” common in electronic mail programs deprive a sender of control over the number and identity of the recipients who eventually may have access to the sender’s message. Moreover, it is quite possible that, through the use of electronic mail, a quorum of a governmental body may receive information on a subject within the body’s jurisdiction in an almost real-time basis, just as they would receive it in a physical gathering of the members.

Inadvertent violations of the open meetings law through the use of electronic communications can be reduced if electronic mail is used principally to transmit information one-way to a body’s membership; if the originator of the message reminds recipients to reply only to the originator, if at all; and if message recipients are scrupulous about minimizing the content and distribution of their replies. Nevertheless, because of the absence of judicial guidance on the subject, and because electronic mail creates the risk that it will be used to carry on private debate and discussion on matters that belong at public meetings subject to public scrutiny, the Attorney General’s Office strongly discourages the members of every governmental body from using electronic mail to communicate about issues within the body’s realm of authority. Krischan Correspondence, October 3, 2000; Benson Correspondence, March 12, 2004. Members of a governmental body may not decide matters by email voting, even if the result of the vote is later ratified at a properly noticed meeting. I-01-10, January 25, 2010.

3. Walking quorums.

The requirements of the open meetings law also extend to walking quorums. A “walking quorum” is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum. *Showers*, 135 Wis. 2d at 92, quoting *Conta*, 71 Wis. 2d at 687. In *Conta*, the Court recognized the danger that a walking quorum may produce a predetermined outcome and thus render the publicly-held meeting a mere formality. *Conta*, 71 Wis. 2d at 685-88. The Court commented that any attempt to avoid the appearance of a “meeting” through use of a walking quorum is subject to prosecution under the open meetings law. *Conta*, 71 Wis. 2d at 687. The requirements of the open meetings law thus cannot be circumvented by using an agent or surrogate to poll the members of governmental bodies through a series of individual contacts. Such a circumvention “almost certainly” violates the open meetings law. Clifford Correspondence, April 28, 1986; *see also* Herbst Correspondence, July 16, 2008 (use of administrative staff to individually poll a quorum of members regarding how they would vote on a proposed motion at a future meeting is a prohibited walking quorum).

The essential feature of a “walking quorum” is the element of agreement among members of a body to act uniformly in sufficient numbers to reach a quorum. Where there is no such express or tacit agreement, exchanges among separate groups of members may take place without violating the open meetings law. The signing, by members of a body, of a document asking that a subject be placed on the agenda of an upcoming meeting thus does not constitute a “walking quorum” where the signers have not engaged in substantive discussion or agreed on a uniform course of action regarding the proposed subject. Kay Correspondence, April 25, 2007; Kittleson Correspondence, June 13, 2007. In contrast, where a majority of members of a body sign a document that expressly commits them to a future course of action, a court could find a walking quorum violation. Huff Correspondence, January 15, 2008; *see also* I-01-10, January 25, 2010 (use of email voting to decide matters fits the definition of a “walking quorum” violation of the open meetings law).

4. Multiple meetings.

When a quorum of the members of one governmental body attend a meeting of another governmental body under circumstances where their attendance is not chance or social, in order to gather information or otherwise engage in governmental business regarding a subject over which they have decision-making responsibility, two separate meetings occur, and notice must be given of both meetings. *Badke*, 173 Wis. 2d at 577. The Attorney General has advised that, despite the “separate public notice” requirement of Wis. Stat. § 19.84(4), a single notice can be used, provided that the notice clearly and plainly indicates that a joint meeting will be held and gives the names of each of the bodies involved, and provided that the notice is published and/or posted in each place where meeting notices are generally published or posted for each governmental body involved. Friedman Correspondence, March 4, 2003.

The kinds of multiple meetings presented in the *Badke* case, and the separate meeting notices required there, must be distinguished from circumstances where a subunit of a parent body meets during a recess from or immediately following the parent body’s meeting, to discuss or act on a matter that was the subject of the parent body’s meeting. In such circumstances, Wis. Stat. § 19.84(6) allows the subunit to meet on that matter without prior public notice.

5. Burden of proof as to existence of a meeting.

The presence of members of a governmental body does not, in itself, establish the existence of a “meeting” subject to the open meetings law. The law provides, however, that if one-half or more of the members of a body are present, the gathering is presumed to be a “meeting.” Wis. Stat. § 19.82(2). The law also exempts any “social or chance gathering” not intended to circumvent the requirements of the open meetings law. Wis. Stat. § 19.82(2). Thus, where one-half or more of the members of a governmental body rode to a meeting in the same vehicle, the law presumes that the members conducted a “meeting” which was subject to all of the requirements of the open meetings law. Karstens Correspondence, July 31, 2008. Similarly, where a majority of members of a common council gathered at a lounge immediately following a common council meeting, a

violation of the open meetings law was presumed. Dieck Correspondence, September 12, 2007. The members of the governmental body may overcome the presumption by proving that they did not discuss any subject that was within the realm of the body's authority. *Id.*

Where a person alleges that a gathering of less than one-half the members of a governmental body was held in violation of the open meetings law, that person has the burden of proving that the gathering constituted a "meeting" subject to the law. *Showers*, 135 Wis. 2d at 102. That burden may be satisfied by proving: (1) that the members gathered to conduct governmental business and (2) that there was a sufficient number of members present to determine the body's course of action.

Again, it is important to remember that the overriding policy of the open meetings law is to ensure public access to information about governmental affairs. Under the rule of liberally construing the law to ensure this purpose, any doubts as to whether a particular gathering constitutes a "meeting" subject to the open meetings law should be resolved in favor of complying with the provisions of the law.

III. WHAT IS REQUIRED IF THE OPEN MEETINGS LAW APPLIES?

The two most basic requirements of the open meetings law are that a governmental body:

- (1) give advance public notice of each of its meetings, and
- (2) conduct all of its business in open session, unless an exemption to the open session requirement applies.

Wis. Stat. § 19.83.

A. Notice Requirements.

Wisconsin Stat. § 19.84, which sets forth the public notice requirements, specifies when, how, and to whom notice must be given, as well as what information a notice must contain.

1. To whom and how notice must be given.

The chief presiding officer of a governmental body, or the officer's designee, must give notice of each meeting of the body to: (1) the public; (2) any members of the news media who have submitted a written request for notice; and (3) the official newspaper designated pursuant to state statute or, if none exists, a news medium likely to give notice in the area. Wis. Stat. § 19.84(1).

The chief presiding officer may give notice of a meeting to the public by posting the notice in one or more places likely to be seen by the general public. 66 Op. Att'y Gen. 93, 95. As a general rule, the Attorney General has advised posting notices at three different locations within the jurisdiction that the governmental body serves. *Id.* Alternatively, the chief presiding officer may give notice to the public by paid publication in a news medium likely to give notice in the jurisdictional area the body serves. 63 Op. Att'y Gen. 509, 510-11 (1974). If the presiding officer gives notice in this manner, he or she must ensure that the notice is actually published. Meeting notices may also be posted at a governmental body's website as a supplement to other public notices, but web posting should not be used as a substitute for other methods of notice. Peck Correspondence, April 17, 2006. Nothing in the open meetings law prevents a governmental body from determining that multiple notice methods are necessary to provide adequate public notice of the body's meetings. Skindrud Correspondence, March 12, 2009. If a meeting notice is posted on a governmental body's website, amendments to the notice should also be posted. Eckert Correspondence, July 25, 2007.

The chief presiding officer must also give notice of each meeting to members of the news media who have submitted a written request for notice. *Lawton*, 278 Wis. 2d 388, ¶ 7. Although this notice may be given in writing or by telephone, 65 Op. Att’y Gen. Preface, v-vi (1976), it is preferable to give notice in writing to help ensure accuracy and so that a record of the notice exists. 65 Op. Att’y Gen. 250, 251 (1976). Governmental bodies cannot charge the news media for providing statutorily required notices of public meetings. 77 Op. Att’y Gen. 312, 313 (1988).

In addition, the chief presiding officer must give notice to the officially designated newspaper or, if none exists, to a news medium likely to give notice in the area. *Lawton*, 278 Wis. 2d 388, ¶ 7. The governmental body is not required to pay for and the newspaper is not required to publish such notice. 66 Op. Att’y Gen. 230, 231 (1977). Note, however, that the requirement to provide notice to the officially designated newspaper is distinct from the requirement to provide notice to the public. If the chief presiding officer chooses to provide notice to the public by paid publication in a news medium, the officer must ensure that the notice is in fact published.

When a specific statute prescribes the type of meeting notice a governmental body must give, the body must comply with the requirements of that statute as well as the notice requirements of the open meetings law. Wis. Stat. § 19.84(1)(a). However, violations of those other statutory requirements are not redressable under the open meetings law. For example, the open meetings law is not implicated by a municipality’s alleged failure to comply with the public notice requirements of Wis. Stat. ch. 985 when providing published notice of public hearings on proposed tax incremental financing districts. *See Boyle Correspondence*, May 4, 2005. Where a class 1 notice under Wis. Stat. ch. 985 has been published, however, the public notice requirement of the open meetings law is also thereby satisfied. *Stalle Correspondence*, April 10, 2008.

2. Contents of notice.

a. In general.

Every public notice of a meeting must give the “time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof.” Wis. Stat. § 19.84(2). The chief presiding officer of the governmental body is responsible for providing notice, and when he or she is aware of matters which may come before the body, those matters must be included in the meeting notice. 66 Op. Att’y Gen. 68, 70 (1977). The Attorney General’s Office has advised that a chief presiding officer may not avoid liability for a legally deficient meeting notice by assigning to a non-member of the body the responsibility to create and provide a notice that complies with Wis. Stat. § 19.84(2). *Schuh Correspondence*, October 17, 2001.

A frequently recurring question is how specific a subject-matter description in a meeting notice must be. Prior to June 13, 2007, this question was governed by the “bright-line” rule articulated in *State ex rel. H.D. Ent. v. City of Stoughton*, 230 Wis. 2d 480, 602 N.W.2d 72 (Ct. App. 1999). Under that standard, a meeting notice adequately described a subject if it identified “the general topic of items to be discussed” and the simple heading “licenses,” without more, was found sufficient to apprise the public that a city council would reconsider a previous decision to deny a liquor license to a particular local grocery store. *Id.* at 486-87.

On June 13, 2007, the Wisconsin Supreme Court overruled *H.D. Enterprises* and announced a new standard to be applied prospectively to all meeting notices issued after that date. *State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804. In *Buswell*, the Court determined that “the plain meaning of Wis. Stat. § 19.84(2) sets forth a reasonableness standard, and that such a standard strikes the proper balance contemplated in Wis. Stat. §§ 19.81(1) and (4) between the public’s right to information and the government’s need to efficiently conduct its business.” *Id.*, ¶ 3. This reasonableness standard “requires a case-specific analysis” and “whether notice is sufficiently specific will depend upon what is reasonable under the circumstances.” *Id.*, ¶ 22. In making that determination, the factors to be considered include: “[1] the burden of providing more detailed notice, [2] whether the subject is of particular public interest, and [3] whether it involves non-routine action that the public would be unlikely to anticipate.” *Id.*, ¶ 28 (bracketed references added).

The first factor “balances the policy of providing greater information with the requirement that providing such information be ‘compatible with the conduct of governmental affairs.’ Wis. Stat. § 19.81(1).” *Id.*, ¶ 29. The determination must be made on a case-by-case basis. *Id.* “[T]he demands of specificity should not thwart the efficient administration of governmental business.” *Id.*

The second factor takes into account “both the number of people interested and the intensity of that interest,” though the level of interest is not dispositive, and must be balanced with other factors on a case-by-case basis. *Id.*, ¶ 30.

The third factor considers “whether the subject of the meeting is routine or novel.” *Id.*, ¶ 31. There may be less need for specificity where a meeting subject occurs routinely, because members of the public are more likely to anticipate that the subject will be addressed. *Id.* “Novel issues may . . . require more specific notice.” *Id.*

Whether a meeting notice is reasonable, according to the Court, “cannot be determined from the standpoint of when the meeting actually takes place,” but rather must be “based upon what information is available to the officer noticing the meeting at the time the notice is provided, and based upon what it would be reasonable for the officer to know.” *Id.*, ¶ 32. Once reasonable notice has been given, “meeting participants would be free to discuss any aspect of the noticed subject matter, as well as issues that are reasonably related to it.” *Id.*, ¶ 34. However, “a meeting cannot address topics unrelated to the information in the notice.” *Id.* The Attorney General has similarly advised, in an informal opinion, that if a meeting notice contains a general subject matter designation and a subject that was not specifically noticed comes up at the meeting, a governmental body should refrain from engaging in any information gathering or discussion or from taking any action that would deprive the public of information about the conduct of governmental business. I-05-93, April 26, 1993.

Whether a meeting notice reasonably apprises the public of the meeting’s subject matter may also depend in part on the surrounding circumstances. A notice that might be adequate, standing alone, may nonetheless fail to provide reasonable notice if it is accompanied by other statements or actions that expressly contradict it, or if the notice is misleading when considered in the light of long-standing policies of the governmental body. Linde Correspondence, May 4, 2007; Koss Correspondence, May 30, 2007; Musolf Correspondence, July 13, 2007; Martinson Correspondence, March 2, 2009.

In order to draft a meeting notice that complies with the reasonableness standard, a good rule of thumb will be to ask whether a person interested in a specific subject would be aware, upon reading the notice, that the subject might be discussed.

b. Generic agenda items.

Purely generic subject matter designations such as “old business,” “new business,” “miscellaneous business,” “agenda revisions,” or “such other matters as are authorized by law” are insufficient because, standing alone, they identify no particular subjects at all. Becker Correspondence, November 30, 2004; Heupel Correspondence, August 29, 2006. Similarly, the use of a notice heading that merely refers to an earlier meeting of the governmental body (or of some other body) without identifying any particular subject of discussion is so lacking in informational value that it almost certainly fails to give the public reasonable notice of what the governmental body intends to discuss. Erickson Correspondence, April 22, 2009. If such a notice is meant to indicate an intent to simply receive and approve minutes of the designated meeting, it should so indicate and discussion should be limited to whether the minutes accurately reflect the substance of that meeting. *Id.*

Likewise, the Attorney General has advised that the practice of using such designations as “mayor comments,” “alderman comments,” or “staff comments” for the purpose of communicating information on matters within the scope of the governmental body’s authority “is, at best, at the outer edge of lawful practice, and may well cross the line to become unlawful.” Rude Correspondence, March 5, 2004. Because members and officials of governmental bodies have greater opportunities for input into the agenda-setting process than the

public has, they should be held to a higher standard of specificity regarding the subjects they intend to address. Thompson Correspondence, September 3, 2004.

c. Action agenda items.

The Wisconsin Court of Appeals has noted that “Wis. Stat. § 19.84(2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken.” *State ex rel. Olson v. City of Baraboo*, 2002 WI App 64, ¶ 15, 252 Wis. 2d 628, 643 N.W.2d 796. The *Buswell* decision inferred from this that “adequate notice . . . may not require information about whether a vote on a subject will occur, so long as the subject matter of the vote is adequately specified.” *Buswell*, 301 Wis. 2d 178, ¶ 37 n.7. Both in *Olson* and in *Buswell*, however, the courts reiterated the principle—first recognized in *Badke*, 173 Wis. 2d at 573-74 and 577-78—that the information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend. *Buswell*, 301 Wis. 2d 178, ¶ 26; *Olson*, 252 Wis. 2d 628, ¶ 15. The *Olson* decision thus acknowledged that, in some circumstances, a failure to expressly state whether action will be taken at a meeting could be a violation of the open meetings law. *Id.* Although the courts have not articulated the specific standard to apply to this question, it appears to follow from *Buswell* that the test would be whether, under the particular factual circumstances of the case, the notice reasonably alerts the public to the importance of the meeting. Herbst Correspondence, July 16, 2008.

Another frequently asked question is whether a governmental body may act on a motion for reconsideration of a matter voted on at a previous meeting, if the motion is brought under a general subject matter designation. The Attorney General has advised that a member may move for reconsideration under a general subject matter designation, but that any discussion or action on the motion should be set over to a later meeting for which specific notice of the subject matter of the motion is given. Bukowski Correspondence, May 5, 1986.

d. Notice of closed sessions.

The notice provision in Wis. Stat. § 19.84(2) requires that if the chief presiding officer or the officer’s designee knows at the time he or she gives notice of a meeting that a closed session is contemplated, the notice must contain the subject matter to be considered in closed session. Such notice “must contain enough information for the public to discern whether the subject matter is authorized for closed session under § 19.85(1).” *Buswell*, 301 Wis. 2d 178, ¶ 37 n.7. The Attorney General has advised that notice of closed sessions must contain the specific nature of the business, as well as the exemption(s) under which the chief presiding officer believes a closed session is authorized. 66 Op. Att’y Gen. 93, 98. Merely identifying and quoting from a statutory exemption does not reasonably identify any particular subject that might be taken up thereunder and thus is not adequate notice of a closed session. Weinschenk Correspondence, December 29, 2006; Anderson Correspondence, February 13, 2007. In *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 47, 370 N.W.2d 271 (Ct. App. 1985), the Court held that a notice to convene in closed session under Wis. Stat. § 19.85(1)(b) “to conduct a hearing to consider the possible discipline of a public employee” was sufficient.

3. Time of notice.

The provision in Wis. Stat. § 19.84(3) requires that every public notice of a meeting be given at least twenty-four hours in advance of the meeting, unless “for good cause” such notice is “impossible or impractical.” If “good cause” exists, the notice should be given as soon as possible and must be given at least two hours in advance of the meeting. Wis. Stat. § 19.84(3).

No Wisconsin court decisions or Attorney General opinions discuss what constitutes “good cause” to provide less than twenty-four-hour notice of a meeting. This provision, like all other provisions of the open meetings law, must be construed in favor of providing the public with the fullest and most complete information about governmental affairs as is compatible with the conduct of governmental business. Wis. Stat. § 19.81(1) and (4). If there is any doubt whether “good cause” exists, the governmental body should provide the full twenty-four-hour notice.

When calculating the twenty-four hour notice period, Wis. Stat. § 990.001(4)(a) requires that Sundays and legal holidays shall be excluded. Posting notice of a Monday meeting on the preceding Sunday is, therefore, inadequate, but posting such notice on the preceding Saturday would suffice, as long as the posting location is open to the public on Saturdays. Caylor Correspondence, December 6, 2007.

Wisconsin Stat. § 19.84(4) provides that separate notice for each meeting of a governmental body must be given at a date and time reasonably close to the meeting date. A single notice that lists all the meetings that a governmental body plans to hold over a given week, month, or year does not comply with the notice requirements of the open meetings law. *See* 63 Op. Att’y Gen. 509, 513. Similarly, a meeting notice that states that a quorum of various town governmental bodies may participate at the same time in a multi-month, on-line discussion of town issues fails to satisfy the “separate notice” requirement. Connors/Haag Correspondence, May 26, 2009.

University of Wisconsin departments and their subunits, as well as the Olympic ice training rink, are exempt from the specific notice requirements in Wis. Stat. § 19.84(1)-(4). Those bodies are simply required to provide notice “which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice.” Wis. Stat. § 19.84(5). Also exempt from the specific notice requirements are certain meetings of subunits of parent bodies held during or immediately before or after a meeting of the parent body. *See* Wis. Stat. § 19.84(6).

4. Compliance with notice.

A governmental body, when conducting a meeting, is free to discuss any aspect of any subject identified in the public notice of that meeting, as well as issues reasonably related to that subject, but may not address any topics that are not reasonably related to the information in the notice. *Buswell*, 301 Wis. 2d 178, ¶ 34. There is no requirement, however, that a governmental body must follow the agenda in the order listed on the meeting notice, unless a particular agenda item has been noticed for a specific time. Stencil Correspondence, March 6, 2008. Nor is a governmental body required to actually discuss every item contained in the public notice. It is reasonable, in appropriate circumstances, for a body to cancel a previously planned discussion or postpone it to a later date. Black Correspondence, April 22, 2009.

B. Open Session Requirements.

1. Accessibility.

In addition to requiring advance public notice of every meeting of a governmental body, the open meetings law also requires that “all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times.” Wis. Stat. § 19.81(2). Similarly, an “open session” is defined in Wis. Stat. § 19.82(3) as “a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times.” Every meeting of a governmental body must initially be convened in “open session.” *See* Wis. Stat. §§ 19.83 and 19.85(1). All business of any kind, formal or informal, must be initiated, discussed, and acted upon in “open session,” unless one of the exemptions set forth in Wis. Stat. § 19.85(1) applies. Wis. Stat. § 19.83.

The requirement that meeting locations be reasonably accessible to the public and open to all citizens at all times means that governmental bodies must hold their meetings in rooms that are reasonably calculated to be large enough to accommodate all citizens who wish to attend the meetings. *Badke*, 173 Wis. 2d at 580-81. Absolute access is not, however, required. *Id.* In *Badke*, for instance, the Wisconsin Supreme Court concluded that a village board meeting that was held in a village hall capable of holding 55-75 people was reasonably accessible, although three members of the public were turned away due to overcrowding. *Id.* at 561, 563, 581. Whether a meeting place is reasonably accessible depends on the facts in each individual case. Any doubt as to whether a meeting facility is large enough to satisfy the requirement should be resolved in favor of holding the meeting in a larger facility.

The policy of openness and accessibility favors governmental bodies holding their meetings in public places, such as a municipal hall or school, rather than on private premises. *See* 67 Op. Att’y Gen. 125, 127 (1978). The law prohibits meetings on private premises that are not open and reasonably accessible to the public. Wis. Stat. § 19.82(3). Generally speaking, places such as a private room in a restaurant or a dining room in a private club are not considered “reasonably accessible.” A governmental body should meet on private premises only in exceptional cases, where the governmental body has a specific reason for doing so which does not compromise the public’s right to information about governmental affairs.

The policy of openness and accessibility also requires that governmental bodies hold their meetings at locations near to the public they serve. Accordingly, the Attorney General has concluded that a school board meeting held forty miles from the district which the school board served was not “reasonably accessible” within the meaning of the open meetings law. Miller Correspondence, May 25, 1977. The Attorney General advises that, in order to comply with the “reasonably accessible” requirement, governmental bodies should conduct all their meetings at a location within the territory they serve, unless there are special circumstances that make it impossible or impractical to do so. I-29-91, October 17, 1991.

Occasionally, a governmental body may need to leave the place where the meeting began in order to accomplish its business—*e.g.*, inspection of a property or construction projects. The Attorney General’s Office has advised that such off-site business may be conducted consistently with the requirements of the open meetings law, as long as certain precautions are taken. First the public notice of the meeting must list all of the locations to be visited in the order in which they will be visited. This makes it possible for a member of the public to follow the governmental body to each location or to join the governmental body at any particular location. Second, each location at which government business is to be conducted must itself be reasonably accessible to the public at all times when such business is taking place. Third, care must be taken to ensure that government business is discussed only during those times when the members of the body are convened at one of the particular locations for which notice has been given. The members of the governmental body may travel together or separately, but if half or more of them travel together, they may not discuss government business when their vehicle is in motion, because a moving vehicle is not accessible to the public. Rappert Correspondence, April 8, 1993; Musolf Correspondence, July 13, 2007.

2. Access for persons with disabilities.

The public accessibility requirements of the open meetings law have long been interpreted by the Attorney General as meaning that every meeting subject to the law must be held in a location that is “reasonably accessible to all citizens, including those with disabilities.” 69 Op. Att’y Gen. 251, 252 (1980). In selecting a meeting facility that satisfies this requirement, a local governmental body has more leeway than does a state governmental body. For a state body, the facility must have physical characteristics that permit persons with functional limitations to enter, circulate, and leave the facility *without* assistance. *See* Wis. Stat. §§ 19.82(3) and 101.13(1); 69 Op. Att’y Gen. 251, 252. In the case of a local governmental body, however, a meeting facility must have physical characteristics that permit persons with functional limitations to enter, circulate, and leave the facility *with* assistance. 69 Op. Att’y Gen. 251, 253. In order to optimally comply with the spirit of open government, however, local bodies should also, whenever possible, meet in buildings and rooms that are accessible without assistance.

The Americans With Disabilities Act and other federal laws governing the rights of persons with disabilities may additionally require governmental bodies to meet accessibility and reasonable accommodation requirements that exceed the requirements imposed by Wisconsin’s open meetings law. For more detailed assistance regarding such matters, both government officials and members of the public are encouraged to consult with their own attorneys or to contact the appropriate federal enforcement authorities.

3. Tape recording and videotaping.

The open meetings law grants citizens the right to attend and observe meetings of governmental bodies that are held in open session. The open meetings law also grants citizens the right to tape record or videotape open session meetings, as long as doing so does not disrupt the meeting. The law explicitly states that a governmental body must make a reasonable effort to accommodate anyone who wants to record, film, or photograph an open session meeting, as long as the activity does not interfere with the meeting. Wis. Stat. § 19.90.

In contrast, the open meetings law does not require a governmental body to permit recording of an authorized closed session. 66 Op. Att’y Gen. 318, 325 (1977); Maroney Correspondence, October 31, 2006. If a governmental body wishes to record its own closed meetings, it should arrange for the security of the records to prevent their improper disclosure. 66 Op. Att’y Gen. 318, 325.

4. Citizen participation.

In general, the open meetings law grants citizens the right to attend and observe open session meetings of governmental bodies, but does not require a governmental body to allow members of the public to speak or actively participate in the body’s meeting. Lundquist Correspondence, October 25, 2005. There are some other state statutes that require governmental bodies to hold public hearings on specified matters. *See* for example, Wis. Stat. § 65.90(4) (requiring public hearing before adoption of a municipal budget) and Wis. Stat. § 66.46(4)(a) (requiring public hearing before creation of a tax incremental finance district). Unless such a statute specifically applies, however, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meetings. Zwiég Correspondence, July 13, 2006; Chiaverotti Correspondence, September 19, 2006.

Although it is not required, the open meetings law does permit a governmental body to set aside a portion of an open meeting as a public comment period. Wis. Stat. §§ 19.83(2) and 19.84(2). Such a period must be included on the meeting notice. During such a period, the body may receive information from the public and may discuss any matter raised by the public. If a member of the public raises a subject that does not appear on the meeting notice, however, it is advisable to limit the discussion of that subject and to defer any extensive deliberation to a later meeting for which more specific notice can be given. In addition, the body may not take formal action on a subject raised in the public comment period, unless that subject is also identified in the meeting notice.

5. Ballots, votes, and records, including meeting minutes.

No secret ballot may be used to determine any election or decision of a governmental body, except the election of officers of a body. Wis. Stat. § 19.88(1). For example, a body cannot vote by secret ballot to fill a vacancy on a city council. 65 Op. Att’y Gen. 131 (1976). If a member of a governmental body requests that the vote of each member on a particular matter be recorded, a voice vote or a vote by a show of hands is not permissible unless the vote is unanimous and the minutes reflect who is present for the vote. I-95-89, November 13, 1989. A governmental body may not use email ballots to decide matters, even if the result of the vote is later ratified at a properly noticed meeting. I-01-10, January 25, 2010.

The open meetings law requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. Wis. Stat. § 19.88(3). This requirement applies to both open and closed sessions. De Moya Correspondence, June 17, 2009. Written minutes are the most common method used to comply with the requirement, but they are not the only permissible method. It can also be satisfied if the motions and roll-call votes are recorded and preserved in some other way, such as on a tape recording. I-95-89, November 13, 1989. As long as the body creates and preserves a record of all motions and roll-call votes, it is not required by the open meetings law to take more formal or detailed minutes of other aspects of the meeting. Other statutes outside the open meetings law, however, may prescribe particular minute-taking requirements for certain

governmental bodies and officials that go beyond what is required by the open meetings law. I-20-89, March 8, 1989. *See, e.g.*, Wis. Stat. §§ 59.23(2)(a) (county clerk); 60.33(2)(a) (town clerk); 61.25(3) (village clerk); 62.09(11)(b) (city clerk); 62.13(5)(i) (police and fire commission); 66.1001(4)(b) (plan commission); 70.47(7)(bb) (board of review).

Although Wis. Stat. § 19.88(3) does not indicate how detailed the record of motions and votes should be, the general legislative policy of the open meetings law is that “the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.” Wis. Stat. § 19.81(1). In light of that policy, it seems clear that a governmental body’s records should provide the public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and, if a roll-call vote, how each member voted. De Moya Correspondence, June 17, 2009.

Nothing in the open meetings law prohibits a body from making decisions by general consent, without a formal vote, but such informal procedures are typically only appropriate for routine procedural matters such as approving the minutes of prior meetings or adjourning. In any event, regardless of whether a decision is made by consensus or by some other method, Wis. Stat. § 19.88(3) still requires the body to create and preserve a meaningful record of that decision. Huebscher Correspondence, May 23, 2008. “Consent agendas,” whereby a body discusses individual items of business under separate agenda headings, but takes action on all discussed items by adopting a single motion to approve all the items previously discussed, are likely insufficient to satisfy the recordkeeping requirements of Wis. Stat. § 19.88(3). Perlick Correspondence, May 12, 2005.

Wisconsin Stat. § 19.88(3) also provides that meeting records created under that statute—whether for an open or a closed session—must be open to public inspection to the extent prescribed in the state public records law. Because the records law contains no general exemption for records created during a closed session, a custodian must release such items unless the particular record at issue is subject to a specific statutory exemption or the custodian concludes that the harm to the public from its release would outweigh the benefit to the public. De Moya Correspondence, June 17, 2009. There is a strong presumption under the public records law that release of records is in the public interest. As long as the reasons for convening in closed session continue to exist, however, the custodian may be able to justify not disclosing any information that requires confidentiality. But the custodian still must separate information that can be made public from that which cannot and must disclose the former, even if the latter can be withheld. In addition, once the underlying purpose for the closed session ceases to exist, all records of the session must then be provided to any person requesting them. *See* 67 Op. Att’y Gen. 117, 119 (1978).

IV. WHEN IS IT PERMISSIBLE TO CONVENE IN CLOSED SESSION?

Every meeting of a governmental body must initially be convened in open session. All business of any kind, formal or informal, must be initiated, discussed, and acted upon in open session unless one of the exemptions in Wis. Stat. § 19.85(1) applies. Wis. Stat. § 19.83.

A. Notice Of Closed Session.

The notice provision in Wis. Stat. § 19.84(2) requires that, if the chief presiding officer of a governmental body is aware that a closed session is contemplated at the time he or she gives public notice of the meeting, the notice must contain the subject matter of the closed session.⁴

⁴*See* section III.A.2.d. of this Guide for information on how to comply with this requirement.

If the chief presiding officer was not aware of a contemplated closed session at the time he or she gave notice of the meeting, that does not foreclose a governmental body from going into closed session under Wis. Stat. § 19.85(1) to discuss an item contained in the notice for the open session. 66 Op. Att’y Gen. 106, 108 (1977). In both cases, a governmental body must follow the procedure set forth in Wis. Stat. § 19.85(1) before going into closed session.

B. Procedure For Convening In Closed Session.

Every meeting of a governmental body must initially be convened in open session. Wis. Stat. §§ 19.83 and 19.85(1). Before convening in closed session, the governmental body must follow the procedure set forth in Wis. Stat. § 19.85(1) which requires that the governmental body pass a motion, by recorded majority vote, to convene in closed session. If a motion is unanimous, there is no requirement to record the votes individually. *Schaeve*, 125 Wis. 2d at 51. Before the governmental body votes on the motion, the chief presiding officer must announce and record in open session the nature of the business to be discussed and the specific statutory exemption which is claimed to authorize the closed session. 66 Op. Att’y Gen. 93, 97-98. Stating only the statute section number of the applicable exemption is not sufficient because many exemptions contain more than one reason for authorizing closure. For example, Wis. Stat. § 19.85(1)(c) allows governmental bodies to use closed sessions to interview candidates for positions of employment, to consider promotions of particular employees, to consider the compensation of particular employees, and to conduct employee evaluations—each of which is a different reason that should be identified in the meeting notice and in the motion to convene into closed session. Reynolds/Kreibich Correspondence, October 23, 2003. Similarly, merely identifying and quoting from a statutory exemption does not adequately announce what particular part of the governmental body’s business is to be considered under that exemption. Weinschenk Correspondence, December 29, 2006; Anderson Correspondence, February 13, 2007. Enough specificity is needed in describing the subject matter of the contemplated closed meeting to enable the members of the governmental body to intelligently vote on the motion to close the meeting. Heule Correspondence, June 29, 1977; *see also Buswell*, 301 Wis. 2d 178, ¶ 37 n.7. If several exemptions are relied on to authorize a closed discussion of several subjects, the motion should make it clear which exemptions correspond to which subjects. Brisco Correspondence, December 13, 2005. The governmental body must limit its discussion in closed session to the business specified in the announcement. Wis. Stat. § 19.85(1).

C. Authorized Closed Sessions.

Wisconsin Stat. § 19.85(1) contains thirteen exemptions to the open session requirement which permit, but do not require, a governmental body to convene in closed session. Because the law is designed to provide the public with the most complete information possible regarding the affairs of government, exemptions should be strictly construed. *State ex rel. Hodge v. Turtle Lake*, 180 Wis. 2d 62, 71, 508 N.W.2d 603 (1993); *Citizens for Responsible Development*, 300 Wis. 2d 649, ¶ 8. The policy of the open meetings law dictates that the exemptions be invoked sparingly and only where necessary to protect the public interest. If there is any doubt as to whether closure is permitted under a given exemption, the governmental body should hold the meeting in open session. *See* 74 Op. Att’y Gen. 70, 73 (1985).

The following are some of the most frequently cited exemptions.

1. Judicial or quasi-judicial hearings.

Wisconsin Stat. § 19.85(1)(a) authorizes a closed session for “[d]eliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.” In order for this exemption to apply, there must be a “case” that is the subject of a quasi-judicial proceeding. *Hodge*, 180 Wis. 2d at 72; *cf. State ex rel. Cities S. O. Co. v. Bd. of Appeals*, 21 Wis. 2d 516, 537, 124 N.W.2d 809 (1963) (allowing zoning appeal boards to deliberate in closed session after hearing, decided before the Legislature added the “case” requirement in 1977). The Wisconsin Supreme Court held that the term “case” contemplates a controversy among parties that are adverse to one another; it does not include a mere request for a permit. *Hodge*, 180 Wis. 2d at 74. An example of a governmental body that considers “cases” and thus can convene in closed

session under Wis. Stat. § 19.85(1)(a), where appropriate, is the Wisconsin Employment Relations Commission, 68 Op. Att’y Gen. 171 (1979). Bodies that consider zoning appeals, such as boards of zoning appeals and boards of adjustment, may not convene in closed session. Wis. Stat. §§ 59.694(3) (towns); 60.65(5) (counties); and 62.23(7)(e)3. (cities); White Correspondence, May 1, 2009. The meetings of town, village, and city boards of review regarding appeals of property tax assessments must also be conducted in open session. Wis. Stat. § 70.47(2m).

2. Employment and licensing matters.

a. Consideration of dismissal, demotion, discipline, licensing, and tenure.

Two of the statutory exemptions to the open session requirement relate specifically to employment or licensing of an individual. The first, Wis. Stat. § 19.85(1)(b), authorizes a closed session for:

Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter

If a closed session for such a purpose will include an evidentiary hearing or final action, then the governmental body must give the public employee or licensee actual notice of that closed hearing and/or closed final action. Evidentiary hearings are characterized by the formal examination of charges and by taking testimony and receiving evidence in support or defense of specific charges that may have been made. 66 Op. Att’y Gen. 211, 214 (1977). Such hearings may be required by statute, ordinance or rule, by collective bargaining agreement, or by circumstances in which the employee or licensee is the subject of charges that might damage the person’s good name, reputation, honor or integrity, or where the governmental body’s action might impose substantial stigma or disability upon the person. *Id.*

Where actual notice is required, the notice must state that the person has a right to request that any such evidentiary hearing or final action be conducted in open session. If the person makes such a request, the governmental body may not conduct an evidentiary hearing or take final action in closed session. The body may, however, convene in closed session under Wis. Stat. § 19.85(1)(b) for the purpose of deliberating about the dismissal, demotion, licensing, discipline, or investigation of charges. Following such closed deliberations, the body may reconvene in open session and take final action related to the person’s employment or license. *See State ex rel. Epping v. City of Neillsville*, 218 Wis. 2d 516, 581 N.W.2d 548 (Ct. App. 1998); Johnson Correspondence, February 27, 2009.

Nothing in Wis. Stat. § 19.85(1) permits a person who is not a member of the governmental body to demand that the body meet in closed session. The Wisconsin Court of Appeals held that a governmental body was not required to comply with a public employee’s request that the body convene in closed session to vote on the employee’s dismissal. *Schaeve*, 125 Wis. 2d at 40.

b. Consideration of employment, promotion, compensation, and performance evaluations.

The second exemption which relates to employment matters authorizes a closed session for “[c]onsidering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.” Wis. Stat. § 19.85(1)(c).

The Attorney General’s Office has interpreted this exemption to extend to public officers, such as a police chief, whom the governmental body has jurisdiction to employ. Caturia Correspondence, September 20, 1982. The Attorney General’s Office has also concluded that this exemption is sufficiently broad to authorize convening

in closed session to interview and consider applicants for positions of employment. Caturia Correspondence, September 20, 1982.

An elected official is not considered a “public employee over which the governmental body has jurisdiction or exercises responsibility.” Wis. Stat. § 19.85(1)(c). Thus, Wis. Stat. § 19.85(1)(c) does not authorize a county board to convene in closed session to consider appointments of county board members to a county board committee. 76 Op. Att’y Gen. 276 (1987). Similarly, the exemption does not authorize a school board to convene in closed session to select a person to fill a vacancy on the school board. 74 Op. Att’y Gen. 70, 72. The exemption does not authorize a county board or a board committee to convene in closed session for the purposes of screening and interviewing applicants to fill a vacancy in the elected office of county clerk. Haro Correspondence, June 13, 2003. Nor does the exemption authorize a city council or one of its committees to consider a temporary appointment of a municipal judge. O’Connell Correspondence, December 21, 2004.

The language of the exemption refers to a “public employee” rather than to positions of employment in general. The apparent purpose of the exemption is to protect individual employees from having their actions and abilities discussed in public and to protect governmental bodies “from potential lawsuits resulting from open discussion of sensitive information.” *Oshkosh Northwestern Co. v. Oshkosh Library Bd.*, 125 Wis. 2d 480, 486, 373 N.W.2d 459 (Ct. App. 1985). It is not the purpose of the exemption to protect a governmental body when it discusses general policies that do not involve identifying specific employees. *See* 80 Op. Att’y Gen. 176, 177-78 (1992); *see also* *Buswell*, 301 Wis. 2d 178, ¶ 37 (noting that Wis. Stat. § 19.85(1)(c) “provides for closed sessions for considering matters related to *individual* employees”). Thus, Wis. Stat. § 19.85(1)(c) authorizes a closed session to discuss the qualifications of and salary to offer a specific applicant but does not authorize a closed session to discuss the qualifications and salary range for the position in general. 80 Op. Att’y Gen. 176, 178-82. The section authorizes closure to determine increases in compensation for specific employees, 67 Op. Att’y Gen. 117, 118. Similarly, Wis. Stat. § 19.85(1)(c) authorizes closure to determine which employees to lay off, or whether to non-renew an employee’s contract at the expiration of the contract term, *see* 66 Op. Att’y Gen. 211, 213, but not to determine whether to reduce or increase staffing, in general.

3. Consideration of financial, medical, social, or personal information.

The exemption in Wis. Stat. § 19.85(1)(f) authorizes a closed session for:

Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

An example is where a state employee was alleged to have violated a state law. *See Wis. State Journal v. U.W. Platteville*, 160 Wis. 2d 31, 38, 465 N.W.2d 266 (Ct. App. 1990). This exemption is not limited to considerations involving public employees. For example, the Attorney General concluded that, in an exceptional case, a school board could convene in closed session under the exemption to interview a candidate to fill a vacancy on the school board if information is expected to damage a reputation, however, the vote should be in open session. 74 Op. Att’y Gen. 70, 72.

At the same time, the Attorney General cautioned that the exemption in Wis. Stat. § 19.85(1)(f) is extremely limited. It applies only where a member of a governmental body has actual knowledge of information that will have a substantial adverse effect on the person mentioned or involved. Moreover, the exemption authorizes closure only for the duration of the discussions about the information specified in Wis. Stat. § 19.85(1)(f). Thus, the exemption would not authorize a school board to actually appoint a new member to the board in closed session. 74 Op. Att’y Gen. 70, 72.

4. Conducting public business with competitive or bargaining implications.

A closed session is authorized for “[d]eliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.” Wis. Stat. § 19.85(1)(e). This exemption is not limited to deliberating or negotiating the purchase of public property or the investing of public funds. For example, the Attorney General has determined that the exemption authorized a school board to convene in closed session to develop negotiating strategies for collective bargaining. 66 Op. Att’y Gen. 93, 96. (The opinion advised that governmental bodies that are not formed exclusively for collective bargaining comply with the open meetings law when meeting for the purpose of developing negotiating strategy).

Governmental officials must keep in mind, however, that this exemption applies only when “competitive or bargaining reasons require a closed session.” Wis. Stat. § 19.85(1)(e). The exemption is restrictive rather than expansive. *Citizens for Responsible Development*, 300 Wis. 2d 649, ¶¶ 6-8. When a governmental body seeks to convene in closed session under Wis. Stat. § 19.85(1)(e), the burden is on the body to show that competitive or bargaining interests require closure. *Id.*, ¶ 10. An announcement of a contemplated closed session under Wis. Stat. § 19.85(1)(e) that provides only a conclusory assertion that the subject of the session will involve competitive or bargaining issues is inadequate because it does not reflect how the proposed discussion would implicate the competitive or bargaining interests of the body or the body’s basis for concluding that the subject falls within the exemption. Wirth/Lamoreaux Correspondence, May 30, 2007.

The use of the word “require” in Wis. Stat. § 19.85(1)(e) limits that exemption to situations in which competitive or bargaining reasons leave a governmental body with no option other than to close the meeting. *Citizens for Responsible Development*, 300 Wis. 2d 649, ¶ 14. On the facts as presented in *Citizens for Responsible Development*, the Court thus found that a desire or request for confidentiality by a private developer engaged in negotiations with a city was not sufficient to justify a closed session for competitive or bargaining reasons. *Id.*, ¶¶ 13-14. Nor did the fear that public statements might attract the attention of potential private competitors for the developer justify closure under this exemption, because the Court found that such competition would be likely to benefit, rather than harm, the city’s competitive or bargaining interests. *Id.*, ¶ 14 n.6. Similarly, holding closed meetings about ongoing negotiations between the city and private parties would not prevent those parties from seeking a better deal elsewhere. The possibility of such competition, therefore, also did not justify closure under Wis. Stat. § 19.85(1)(e). *Citizens for Responsible Development*, 300 Wis. 2d 649, ¶¶ 15-16. The exemption did, however, allow the city to close those *portions* of its meetings that would reveal its negotiation strategy or the price it planned to offer for a purchase of property, but it could not close other parts of the meetings. *Id.*, ¶ 19. The competitive or bargaining interests to be protected by a closed session under Wis. Stat. § 19.85(1)(e) do not have to be shared by every member of the body or by every municipality participating in an intergovernmental body. *State ex rel. Herro v. Village of McFarland*, 2007 WI App 172, ¶¶ 16-19, 303 Wis. 2d 749, 737 N.W.2d 55.

Consistent with the above emphasis on the word “require” in Wis. Stat. § 19.85(1)(e), the Attorney General has advised that mere inconvenience, delay, embarrassment, frustration, or even speculation as to the probability of success would be an insufficient basis to close a meeting. Gempeler Correspondence, February 12, 1979. Competitive or bargaining reasons permit a closed session where the discussion will directly and substantially affect negotiations with a third party, but not where the discussions might be one of several factors that indirectly influence the outcome of those negotiations. Henderson Correspondence, March 24, 1992. The meetings of a governmental body also may not be closed in a blanket manner merely because they may at times involve competitive or bargaining issues, but rather may only be closed on those occasions when the particular meeting is going to involve discussion which, if held in open session, would harm the competitive or bargaining interests at issue. I-04-09, September 28, 2009. Once a governmental body’s bargaining team has reached a tentative agreement, the discussion whether the body should ratify the agreement should be conducted in open session. 81 Op. Att’y Gen. 139, 141 (1994).

5. Conferring with legal counsel with respect to litigation.

The exemption in Wis. Stat. § 19.85(1)(g) authorizes a closed session for “[c]onfering with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.”

The presence of the governmental body’s legal counsel is not, in itself, sufficient reason to authorize closure under this exemption. The exemption applies only if the legal counsel is rendering advice on strategy to adopt for litigation in which the governmental body is or is likely to become involved.

There is no clear-cut standard for determining whether a governmental body is “likely” to become involved in litigation. Members of a governmental body should rely on the body’s legal counsel for advice on whether litigation is sufficiently “likely” to authorize a closed session under Wis. Stat. § 19.85(1)(g).

6. Remaining exemptions.

The remaining exemptions in Wis. Stat. § 19.85(1) authorize closure for:

1. Considering applications for probation or parole, or considering strategy for crime detection or prevention. Wis. Stat. § 19.85(1)(d).
2. Specified deliberations by the state council on unemployment insurance and the state council on worker’s compensation. Wis. Stat. § 19.85(1)(ee) and (eg).
3. Specified deliberations involving the location of a burial site. Wis. Stat. § 19.85(1)(em).
4. Consideration of requests for confidential written advice from an ethics board. Wis. Stat. § 19.85(1)(h).
5. Considering specified matters related to a business ceasing its operations or laying off employees. Wis. Stat. § 19.85(1)(i).
6. Considering specified financial information relating to the support of a nonprofit corporation operating an ice rink owned by the state. Wis. Stat. § 19.85(1)(j).⁵

D. Who May Attend A Closed Session.

A frequently asked question concerns who may attend the closed session meetings of a governmental body. In general, the open meetings law gives wide discretion to a governmental body to admit into a closed session anyone whose presence the body determines is necessary for the consideration of the matter that is the subject of the meeting. *Schuh Correspondence*, December 15, 1988. If the governmental body is a subunit of a parent body, the subunit must allow members of the parent body to attend its open session and closed session meetings, unless the rules of the parent body or subunit provide otherwise. Wis. Stat. § 19.89. Where enough non-members of a subunit attend the subunit’s meetings that a quorum of the parent body is present, a meeting of the parent body occurs, and the notice requirements of Wis. Stat. § 19.84 apply. *Badke*, 173 Wis. 2d at 579.

E. Voting In An Authorized Closed Session.

The Wisconsin Supreme Court has held that Wis. Stat. § 14.90 (1959), a predecessor to the current open meetings law, authorized a governmental body to vote in closed session on matters that were the legitimate subject of deliberation in closed session. *Cities S. O. Co.*, 21 Wis. 2d at 538. The Court reasoned that “voting is an integral part of deliberating and merely formalizes the result reached in the deliberating process.” *Id.* at 539.

In *Schaeve*, 125 Wis. 2d at 53, the Court of Appeals commented on the propriety of voting in closed session under the current open meetings law. The Court indicated that a governmental body must vote in open

⁵For more detailed information on these exemptions, consult the text of Wis. Stat. § 19.85(1), which appears in Appendix A.

session unless an exemption in Wis. Stat. § 19.85(1) expressly authorizes voting in closed session. *Id.* The Court’s statement was not essential to its holding and it is unclear whether the Supreme Court would adopt a similar interpretation of the current open meetings law.

Given this uncertainty, the Attorney General advises that a governmental body vote in open session, unless the vote is clearly an integral part of deliberations authorized to be conducted in closed session under Wis. Stat. § 19.85(1). Stated another way, a governmental body should vote in open session, unless doing so would compromise the need for the closed session. *Accord, Epping*, 218 Wis. 2d at 524 n.4 (even if deliberations were conducted in an unlawful closed session, a subsequent vote taken in open session could not be voided).

None of the exemptions in Wis. Stat. § 19.85(1) authorize a governmental body to consider in closed session the ratification or final approval of a collective bargaining agreement negotiated by or for the body. Wis. Stat. § 19.85(3); 81 Op. Att’y Gen. 139.

F. Reconvening In Open Session.

A governmental body may not commence a meeting, convene in closed session, and subsequently reconvene in open session within twelve hours after completion of a closed session, unless public notice of the subsequent open session is given “at the same time and in the same manner” as the public notice of the prior open session. Wis. Stat. § 19.85(2). The notice need not specify the time the governmental body expects to reconvene in open session if the body plans to reconvene immediately following the closed session. If the notice does specify the time, the body must wait until that time to reconvene in open session. When a governmental body reconvenes in open session following a closed session, the presiding officer has a duty to open the door of the meeting room and inform any members of the public present that the session is open. Claybaugh Correspondence, February 16, 2006.

V. WHO ENFORCES THE OPEN MEETINGS LAW AND WHAT ARE ITS PENALTIES?

A. Enforcement.

Both the Attorney General and the district attorneys have authority to enforce the open meetings law. Wis. Stat. § 19.97(1). In most cases, enforcement at the local level has the greatest chance of success due to the need for intensive factual investigation, the district attorneys’ familiarity with the local rules of procedure, and the need to assemble witnesses and material evidence. 65 Op. Att’y Gen. Preface, ii. Under certain circumstances, the Attorney General may elect to prosecute complaints involving a matter of statewide concern.

A district attorney has authority to enforce the open meetings law only after an individual files a verified open meetings law complaint with the district attorney. *See* Wis. Stat. § 19.97(1). Actions to enforce the open meetings law need not be preceded by a notice of claim. *State ex rel. Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 594-97, 547 N.W.2d 587 (1996). The verified complaint must be signed by the individual and notarized and should include available information that will be helpful to investigators, such as: identifying the governmental body and any members thereof alleged to have violated the law; describing the factual circumstances of the alleged violations; identifying witnesses with relevant evidence; and identifying any relevant documentary evidence.⁶ The district attorney has broad discretion to determine whether a verified complaint should be prosecuted. *State v. Karpinski*, 92 Wis. 2d 599, 607, 285 N.W.2d 729 (1979). An enforcement action brought by a district attorney or by the Attorney General must be commenced within 6 years after the cause of action accrues or be barred. *See* Wis. Stat. § 893.93(1)(a).

⁶A model complaint appears in Appendix B.

Proceedings to enforce the open meetings law are civil actions subject to the rules of civil procedure, rather than criminal procedure, and governed by the ordinary civil standard of proof, rather than a heightened standard of proof such as would apply in a criminal or quasi-criminal proceeding. Accordingly, enforcement of the open meetings law does not involve such practices as arrest, posting bond, entering criminal-type pleas, or any other aspects of criminal procedure. Rather, an open meetings law enforcement action is commenced like any civil action by filing and serving a summons and complaint. In addition, the open meetings law cannot be enforced by the issuance of a citation, in the way that other civil forfeitures are often enforced, because citation procedures are inconsistent with the statutorily-mandated verified complaint procedure. Zwieg Correspondence, March 10, 2005.

If the district attorney refuses to commence an open meetings law enforcement action or otherwise fails to act within twenty days of receiving a complaint, the individual who filed the complaint has a right to bring an action, in the name of the state, to enforce the open meetings law. *Lawton*, 278 Wis. 2d 388, ¶ 15. Wis. Stat. § 19.97(4). See also *Fabyan v. Achtenhagen*, 2002 WI App 214, ¶¶ 10-13, 257 Wis. 2d 310, 652 N.W.2d 649 (complaint under Wis. Stat. § 19.97 must be brought in the name of and on behalf of the state; *i.e.*, the caption must bear the title “State ex rel. . . .,” or the court lacks competency to proceed). Although an individual may not bring a private enforcement action prior to the expiration of the district attorney’s twenty-day review period, the district attorney may still commence an action even though more than twenty days have passed. It is not uncommon for the review and investigation of open meetings complaints to take longer than twenty days.

Court proceedings brought by private relators to enforce the open meetings law must be commenced within two years after the cause of action accrues, or the proceedings will be barred. Wis. Stat. § 893.93(2)(a); *State ex rel. Leung v. City of Lake Geneva*, 2003 WI App 129, ¶ 6, 265 Wis. 2d 674, 666 N.W.2d 104. If a private relator brings an enforcement action and prevails, the court is authorized to grant broad relief, including a declaration that the law was violated, civil forfeitures where appropriate, and the award of the actual and necessary costs of prosecution, including reasonable attorney fees. Wis. Stat. § 19.97(4). Attorney fees will be awarded under this provision where such an award will provide an incentive to other private parties to similarly vindicate the public’s rights to open government and will deter governmental bodies from skirting the open meetings law. *Buswell*, 301 Wis. 2d 178, ¶ 54.

B. Penalties.

Any member of a governmental body who “knowingly” attends a meeting held in violation of the open meetings law, or otherwise violates the law, is subject to a forfeiture of between \$25 and \$300 for each violation. Wis. Stat. § 19.96. Any forfeiture obtained in an action brought by the district attorney is awarded to the county. Wis. Stat. § 19.97(1). Any forfeiture obtained in an action brought by the Attorney General or a private citizen is awarded to the state. Wis. Stat. § 19.97(1), (2), and (4).

The Wisconsin Supreme Court has defined “knowingly” as not only positive knowledge of the illegality of a meeting, but also awareness of the high probability of the meeting’s illegality or conscious avoidance of awareness of the illegality. *Swanson*, 92 Wis. 2d at 319. The Court also held that knowledge is not required to impose forfeitures on an individual for violating the open meetings law by means other than attending a meeting held in violation of the law. Examples of “other violations” are failing to give the required public notice of a meeting or failing to follow the procedure for closing a session. *Id.* at 321.

A member of a governmental body who is charged with knowingly attending a meeting held in violation of the law may raise one of two defenses: (1) that the member made or voted in favor of a motion to prevent the violation or (2) that the member’s votes on all relevant motions prior to the violation were inconsistent with the cause of the violation. Wis. Stat. § 19.96.

A member who is charged with a violation other than knowingly attending a meeting held in violation of the law may be permitted to raise the additional statutory defense that the member did not act in his or her official capacity. In addition, in *Swanson*, 92 Wis. 2d at 319, and *Hodge*, 180 Wis. 2d at 80, the Supreme Court intimated

that a member of a governmental body can avoid liability if he or she can factually prove that he or she relied, in good faith and in an open and unconcealed manner, on the advice of counsel whose statutory duties include the rendering of legal opinions as to the actions of the body. See *State v. Tereschko*, 2001 WI App 146, ¶¶ 9-10, 246 Wis. 2d 671, 630 N.W.2d 277 (unpublished opinion declining to find a knowing violation where school board members relied on the advice of counsel in going into closed session); *State v. Davis*, 63 Wis. 2d 75, 82, 216 N.W.2d 31 (1974) (interpreting Wis. Stat. § 946.13(1) (private interest in public contract)). Cf. *Journal/Sentinel v. Shorewood School Bd.*, 186 Wis. 2d 443, 452-55, 521 N.W.2d 165 (Ct. App. 1994) (school board may not avoid duty to provide public records by delegating the creation and custody of the record to its attorneys).

A governmental body may not reimburse a member for a forfeiture incurred as a result of a violation of the law, unless the enforcement action involved a real issue as to the constitutionality of the open meetings law. 66 Op. Att’y Gen. 226 (1977). Although it is not required to do so, a governmental body may reimburse a member for his or her reasonable attorney fees in defending against an enforcement action and for any plaintiff’s attorney fees that the member is ordered to pay. The city attorney may represent city officials in open meetings law enforcement actions. 77 Op. Att’y Gen. 177, 180 (1988).

In addition to the forfeiture penalty, Wis. Stat. § 19.97(3) provides that a court may void any action taken at a meeting held in violation of the open meetings law if the court finds that the interest in enforcing the law outweighs any interest in maintaining the validity of the action. Thus, in *Hodge*, 180 Wis. 2d at 75-76, the Court voided the town board’s denial of a permit, taken after an unauthorized closed session deliberation about whether to grant or deny the permit. Cf. *Epping*, 218 Wis. 2d at 524 n.4 (arguably unlawful closed session deliberation does not provide basis for voiding subsequent open session vote); *State ex rel. Ward v. Town of Nashville*, 2001 WI App 224, ¶ 30, 247 Wis. 2d 988, 635 N.W.2d 26 (unpublished opinion declining to void an agreement made in open session, where the agreement was the product of three years of unlawfully closed meetings). A court may award any other appropriate legal or equitable relief, including declaratory and injunctive relief. Wis. Stat. § 19.97(2).

In enforcement actions seeking forfeitures, the provisions of the open meetings law must be narrowly construed due to the penal nature of forfeiture. In all other actions, the provisions of the law must be liberally construed to ensure the public’s right to “the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.” Wis. Stat. § 19.81(1) and (4). Thus, it is advisable to prosecute forfeiture actions separately from actions seeking other types of relief under the open meetings law.

C. Interpretation by Attorney General.

In addition to the methods of enforcement discussed above, the Attorney General also has express statutory authority to respond to requests for advice from any person as to the applicability of the open meetings and public records laws. Wis. Stat. §§ 19.39 and 19.98. This differs from other areas of law, in which the Attorney General is only authorized to give legal opinions or advice to specified governmental officials and agencies. Because the Legislature has expressly authorized the Attorney General to interpret the open meetings law, the Supreme Court has acknowledged that the Attorney General's opinions in this area should be given substantial weight. *BDADC*, 312 Wis. 2d 84, ¶¶ 37, 44-45.

Citizens with questions about matters outside the scope of the open meetings and public records laws, should seek assistance from a private attorney. Citizens and public officials with questions about the open meetings law or the public records law are advised to first consult the applicable statutes, the corresponding discussions in this Compliance Guide and in the Department of Justice's Public Records Law Compliance Outline, court decisions, and prior Attorney General opinions and to confer with their own private or governmental attorneys. In the rare instances where a question cannot be resolved in this manner, a written request for advice may be made to the Wisconsin Department of Justice. In submitting such requests, it should be remembered that the Department of Justice cannot conduct factual investigations, resolve disputed issues of fact, or make definitive determinations on fact-specific issues. Any response will thus be based solely on the information provided.

APPENDIX A

OPEN MEETINGS LAW

Wis. Stat. §§ 19.81 - 19.98 (2007-08)

19.69 GENERAL DUTIES OF PUBLIC OFFICIALS

(4) NONAPPLICABILITY. This section does not apply to any matching program established between the secretary of transportation and the commissioner of the federal social security administration pursuant to an agreement specified under s. 85.61 (2).

History: 1991 a. 39, 269; 1995 a. 27; 2003 a. 265.

19.71 Sale of names or addresses. An authority may not sell or rent a record containing an individual's name or address of residence, unless specifically authorized by state law. The collection of fees under s. 19.35 (3) is not a sale or rental under this section.

History: 1991 a. 39.

19.77 Summary of case law and attorney general opinions. Annually, the attorney general shall summarize case law and attorney general opinions relating to due process and other legal issues involving the collection, maintenance, use, provision of access to, sharing or archiving of personally identifiable information by authorities. The attorney general shall provide the summary, at no charge, to interested persons.

History: 1991 a. 39.

19.80 Penalties. (2) EMPLOYEE DISCIPLINE. Any person employed by an authority who violates this subchapter may be discharged or suspended without pay.

(3) PENALTIES. (a) Any person who willfully collects, discloses or maintains personally identifiable information in violation of federal or state law may be required to forfeit not more than \$500 for each violation.

(b) Any person who willfully requests or obtains personally identifiable information from an authority under false pretenses may be required to forfeit not more than \$500 for each violation.

History: 1991 a. 39, 269.

SUBCHAPTER V

OPEN MEETINGS OF GOVERNMENTAL BODIES

19.81 Declaration of policy. (1) In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.

(2) To implement and ensure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.

(3) In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall remain open, except when the public welfare requires secrecy, it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter.

(4) This subchapter shall be liberally construed to achieve the purposes set forth in this section, and the rule that penal statutes must be strictly construed shall be limited to the enforcement of forfeitures and shall not otherwise apply to actions brought under this subchapter or to interpretations thereof.

History: 1975 c. 426; 1983 a. 192.

NOTE: The following annotations relate to s. 66.77, repealed by Chapter 426, laws of 1975.

Subsequent to the presentation of evidence by the taxpayer, a board of review's consideration of testimony by the village assessor at an executive session was contrary to the open meeting law. Although it was permissible for the board to convene a closed session for the purpose of deliberating after a quasi-judicial hearing, the proceedings did not constitute mere deliberations but were a continuation of the quasi-judicial hearing without the presence of or notice to the objecting taxpayer. *Dolphin v. Butler Board of Review*, 70 Wis. 2d 403, 234 N.W.2d 277 (1975).

The open meeting law is not applicable to the judicial commission. *State ex rel. Lynch v. Dancy*, 71 Wis. 2d 287, 238 N.W.2d 81 (1976).

A regular open meeting, held subsequent to a closed meeting on another subject, does not constitute a reconvened open meeting when there was no prior open meeting on that day. 58 Atty. Gen. 41.

Consideration of a resolution is a formal action of an administrative or minor governing body and when taken in proper closed session, the resolution and result of the vote must be made available for public inspection, pursuant to 19.21, absent a specific showing that the public interest would be adversely affected. 60 Atty. Gen. 9.

Joint apprenticeship committees, appointed pursuant to Wis. Adm. Code provisions, are governmental bodies and subject to the requirements of the open meeting law. 63 Atty. Gen. 363.

Voting procedures employed by worker's compensation and unemployment advisory councils that utilized adjournment of public meeting for purposes of having members representing employers and members representing employees or workers to separately meet in closed caucuses and to vote as a block on reconvening was contrary to the open records law. 63 Atty. Gen. 414.

A governmental body can call closed sessions for proper purposes without giving notice to members of the news media who have filed written requests. 63 Atty. Gen. 470.

The meaning of "communication" is discussed with reference to giving the public and news media members adequate notice. 63 Atty. Gen. 509.

The posting in the governor's office of agenda of future investment board meetings is not sufficient communication to the public or the news media who have filed a written request for notice. 63 Atty. Gen. 549.

A county board may not utilize an unidentified paper ballot in voting to appoint a county highway commissioner, but may vote by ayes and nays or show of hands at an open session if some member does not require the vote to be taken in such manner that the vote of each member may be ascertained and recorded. 63 Atty. Gen. 569.

NOTE: The following annotations refer to ss. 19.81 to 19.98.

When the city of Milwaukee and a private non-profit festival organization incorporated the open meetings law into a contract, the contract allowed public enforcement of the contractual provisions concerning open meetings. *Journal/Sentinel, Inc. v. Pleva*, 155 Wis. 2d 704, 456 N.W.2d 359 (1990).

Sub. (2) requires that a meeting be held in a facility that gives reasonable public access, not total access. No person may be systematically excluded or arbitrarily refused admittance. *State ex rel. Badke v. Greendale Village Bd.* 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

This subchapter is discussed. 65 Atty. Gen. preface.

Public notice requirements for meetings of a city district school board under this subchapter and s. 120.48, 1983 stats., are discussed. 66 Atty. Gen. 93.

A volunteer fire department organized as a nonprofit corporation under s. 213.05 is not subject to the open meeting law. 66 Atty. Gen. 113.

Anyone has the right to tape-record an open meeting of a governmental body provided the meeting is not thereby physically disrupted. 66 Atty. Gen. 318.

The open meeting law does not apply to a coroner's inquest. 67 Atty. Gen. 250.

The open meeting law does not apply if the common council hears a grievance under a collective bargaining agreement. 67 Atty. Gen. 276.

The application of the open meeting law to the duties of WERC is discussed. 68 Atty. Gen. 171.

A senate committee meeting was probably held in violation of the open meetings law although there was never any intention prior to the gathering to attempt to debate any matter of policy, to reach agreement on differences, to make any decisions on any bill or part thereof, to take any votes, or to resolve substantive differences. Quorum gatherings should be presumed to be in violation of the law, due to a quorum's ability to thereafter call, compose and control by vote a formal meeting of a governmental body. 71 Atty. Gen. 63.

Nonstock corporations created by statute as bodies politic clearly fall within the term "governmental body" as defined in the open meetings law and are subject to the provisions of the open meetings law. Nonstock corporations that were not created by the legislature or by rule, but were created by private citizens are not bodies politic and not governmental bodies. 73 Atty. Gen. 53.

A "quasi-governmental corporation" in sub. (1) includes private corporations that closely resemble governmental corporations in function, effect, or status. 80 Atty. Gen. 129.

Understanding Wisconsin's open meeting law. Harvey, WBB September 1980.

Getting the Best of Both Worlds: Open Government and Economic Development. Westerberg. Wis. Law. Feb. 2009.

19.82 Definitions. As used in this subchapter:

(1) "Governmental body" means a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; a long-term care district under s. 46.2895; or a formally constituted subunit of any of the foregoing, but excludes any such body or committee or subunit of such body which is formed for or meeting for the purpose of collective bargaining under subch. I, IV, V, or VI of ch. 111.

(2) "Meeting" means the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any

social or chance gathering or conference which is not intended to avoid this subchapter, any gathering of the members of a town board for the purpose specified in s. 60.50 (6), any gathering of the commissioners of a town sanitary district for the purpose specified in s. 60.77 (5) (k), or any gathering of the members of a drainage board created under s. 88.16, 1991 stats., or under s. 88.17, for a purpose specified in s. 88.065 (5) (a).

(3) “Open session” means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times. In the case of a state governmental body, it means a meeting which is held in a building and room thereof which enables access by persons with functional limitations, as defined in s. 101.13 (1).

History: 1975 c. 426; 1977 c. 364, 447; 1985 a. 26, 29, 332; 1987 a. 305; 1993 a. 215, 263, 456, 491; 1995 a. 27, 185; 1997 a. 79; 1999 a. 9; 2007 a. 20, 96; 2009 a. 28.

A “meeting” under sub. (2) was found although the governmental body was not empowered to exercise the final powers of its parent body. *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

A “meeting” under sub. (2) was found when members met with a purpose to engage in government business and the number of members present was sufficient to determine the parent body’s course of action regarding the proposal discussed. *State ex rel. Newspapers v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987).

The open meetings law is not meant to apply to single-member governmental bodies. Sub. (2) speaks of a meeting of the members, plural, implying there must be at least two members of a governmental body. *Pourde v. Berends*, 2006 WI App 147, 294 Wis. 2d 746, 720 N.W.2d 130, 05–2106.

A corporation is quasi-governmental if, based on the totality of circumstances, it resembles a governmental corporation in function, effect, or status, requiring a case-by-case analysis. Here, a primary consideration was that the body was funded exclusively by public tax dollars or interest thereon. Additionally, its office was located in the municipal building, it was listed on the city Web site, the city provided it with clerical support and office supplies, all its assets revert to the city if it ceases to exist, its books are open for city inspection, the mayor and another city official are directors, and it had no clients other than the city. *State v. Beaver Dam Area Development Corporation*, 2008 WI 90, 312 Wis. 2d 84, 752 N.W.2d 295, 06–0662.

A municipal public utility commission managing a city owned public electric utility is a governmental body under sub. (1). 65 Atty. Gen. 243.

A “private conference” under s. 118.22 (3), on nonrenewal of a teacher’s contract is a “meeting” within s. 19.82 (2). 66 Atty. Gen. 211.

A private home may qualify as a meeting place under sub. (3). 67 Atty. Gen. 125.

A telephone conference call involving members of governmental body is a “meeting” that must be reasonably accessible to the public and public notice must be given. 69 Atty. Gen. 143.

19.83 Meetings of governmental bodies. (1) Every meeting of a governmental body shall be preceded by public notice as provided in s. 19.84, and shall be held in open session. At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session except as provided in s. 19.85.

(2) During a period of public comment under s. 19.84 (2), a governmental body may discuss any matter raised by the public.

History: 1975 c. 426; 1997 a. 123.

When a quorum of a governmental body attends the meeting of another governmental body when any one of the members is not also a member of the second body, the gathering is a “meeting,” unless the gathering is social or by chance. *State ex rel. Badke v. Greendale Village Board*, 173 Wis. 2d 553, 494 N.W.2d 408 (1993).

19.84 Public notice. (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person’s designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

(5) Departments and their subunits in any University of Wisconsin System institution or campus are exempt from the requirements of subs. (1) to (4) but shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice.

(6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1997 a. 123; 2007 a. 20.

There is no requirement in this section that the notice provided be exactly correct in every detail. *State ex rel. Olson v. City of Baraboo Joint Review Board*, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01–0201.

Sub. (2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. The notice must alert the public of the importance of the meeting. Although a failure to expressly state whether action will be taken could be a violation, the importance of knowing whether a vote would be taken is diminished when no input from the audience is allowed or required. *State ex rel. Olson v. City of Baraboo Joint Review Board*, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01–0201.

Sub. (2) sets forth a reasonableness standard for determining whether notice of a meeting is sufficient that strikes the proper balance between the public’s right to information and the government’s need to efficiently conduct its business. The standard requires taking into account the circumstances of the case, which includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate. *Buswell v. Tomah Area School District*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804, 05–2998.

Under sub. (1) (b), a written request for notice of meetings of a governmental body should be filed with the chief presiding officer or designee and a separate written request should be filed with each specific governmental body. 65 Atty. Gen. 166.

The method of giving notice pursuant to sub. (1) is discussed. 65 Atty. Gen. 250. The specificity of notice required by a governmental body is discussed. 66 Atty. Gen. 143, 195.

The requirements of notice given to newspapers under this section is discussed. 66 Atty. Gen. 230.

A town board, but not an annual town meeting, is a “governmental body” within the meaning of the open meetings law. 66 Atty. Gen. 237.

News media who have filed written requests for notices of public meetings cannot be charged fees by governmental bodies for communication of the notices. 77 Atty. Gen. 312.

A newspaper is not obligated to print a notice received under sub. (1) (b), nor is governmental body obligated to pay for publication. *Martin v. Wray*, 473 F. Supp. 1131 (1979).

19.85 Exemptions. (1) Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer’s announcement of the closed session. A closed session may be held for any of the following purposes:

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(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

(d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the government accountability board under s. 5.05 (6a), or from any county or municipal ethics board under s. 19.59 (5).

(i) Considering any and all matters related to acts by businesses under s. 560.15 which, if discussed in public, could adversely affect the business, its employees or former employees.

(2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

(3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. I, IV, V, or VI of ch. 111 which has been negotiated by such body or on its behalf.

History: 1975 c. 426; 1977 c. 260; 1983 a. 84; 1985 a. 316; 1987 a. 38, 305; 1989 a. 64; 1991 a. 39; 1993 a. 97, 215; 1995 a. 27; 1997 a. 39, 237, 283; 1999 a. 32; 2007 a. 1, 20; 2009 a. 28.

Although a meeting was properly closed, in order to refuse inspection of records of the meeting, the custodian was required by s. 19.35 (1) (a) to state specific and sufficient public policy reasons why the public interest in nondisclosure outweighed the public's right of inspection. *Oshkosh Northwestern Co. v. Oshkosh Library Board*, 125 Wis. 2d 480, 373 N.W.2d 459 (Ct. App. 1985).

The balance between protection of reputation under sub. (1) (f) and the public interest in openness is discussed. *Wis. State Journal v. UW-Platteville*, 160 Wis. 2d 31, 465 N.W.2d 266 (Ct. App. 1990). See also *Pangman v. Stigler*, 161 Wis. 2d 828, 468 N.W.2d 784 (Ct. App. 1991).

A "case" under sub. (1) (a) contemplates an adversarial proceeding. It does not connote the mere application for and granting of a permit. *Hodge v. Turtle Lake*, 180 Wis. 2d 62, 508 N.W.2d 603 (1993).

A closed session to discuss an employee's dismissal was properly held under sub. (1) (b) and did not require notice to the employee under sub. (1) (c) when no evidentiary hearing or final action took place in the closed session. *State ex rel. Epping v. City of Neillsville*, 218 Wis. 2d 516, 581 N.W.2d 548 (Ct. App. 1998), 97-0403.

The exception under sub. (1) (e) must be strictly construed. A private entity's desire for confidentiality does not permit a closed meeting. A governing body's belief that secret meetings will produce cost savings does not justify closing the door to public scrutiny. Providing contingencies allowing for future public input was insufficient. Because legitimate concerns were present for portions of some of the meetings does not mean the entirety of the meetings fell within the narrow exception under sub. (1) (e). *Citizens for Responsible Development v. City of Milton*, 2007 WI App 114, 300 Wis. 2d 649, 731 N.W.2d 640, 06-0427.

Section 19.35 (1) (a) does not mandate that, when a meeting is closed under this section, all records created for or presented at the meeting are exempt from disclosure. The court must still apply the balancing test articulated in *Linzmeier*, 2002 WI 84, 254 Wis. 2d 306. *Zellner v. Cedarburg School District*, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 06-1143.

Nothing in sub. (1) (e) suggests that a reason for going into closed session must be shared by each municipality participating in an intergovernmental body. It is not inconsistent with the open meetings law for a body to move into closed session under sub. (1) (e) when the bargaining position to be protected is not shared by every member of the body. Once a vote passes to go into closed session, the reason for requesting the vote becomes the reason of the entire body. *Herro v. Village of McFarland*, 2007 WI App 172, 303 Wis. 2d 749, 737 N.W.2d 55, 06-1929.

In allowing governmental bodies to conduct closed sessions in limited circumstances, this section does not create a blanket privilege shielding closed session contents from discovery. There is no implicit or explicit confidentiality mandate. A closed meeting is not synonymous with a meeting that, by definition, entails a privilege exempting its contents from discovery. *Sands v. The Whitnall School District*, 2008 WI 89, 312 Wis. 2d 1, 754 N.W.2d 439, 05-1026.

Boards of review cannot rely on the exemptions in sub. (1) to close any meeting in view of the explicit requirements in s. 70.47 (2m). 65 Atty. Gen. 162.

A university subunit may discuss promotions not relating to tenure, merit increases, and property purchase recommendations in closed session. 66 Atty. Gen. 60.

Neither sub. (1) (c) nor (f) authorizes a school board to make actual appointments of a new member in closed session. 74 Atty. Gen. 70.

A county board chairperson and committee are not authorized by sub. (1) (c) to meet in closed session to discuss appointments to county board committees. In appropriate circumstances, sub. (1) (f) would authorize closed sessions. 76 Atty. Gen. 276.

Sub. (1) (c) does not permit closed sessions to consider employment, compensation, promotion, or performance evaluation policies to be applied to a position of employment in general. 80 Atty. Gen. 176.

A governmental body may convene in closed session to formulate collective bargaining strategy, but sub. (3) requires that deliberations leading to ratification of a tentative agreement with a bargaining unit, as well as the ratification vote, must be held in open session. 81 Atty. Gen. 139.

"Evidentiary hearing" as used in s. 19.85 (1) (b), means a formal examination of accusations by receiving testimony or other forms of evidence that may be relevant to the dismissal, demotion, licensing, or discipline of any public employee or person covered by that section. A council that considered a mayor's accusations against an employee in closed session without giving the employee prior notice violated the requirement of actual notice to the employee. *Campana v. City of Greenfield*, 38 F. Supp. 2d 1043 (1999).

Closed Session, Open Book: Sifting the *Sands* Case. *Bach*. Wis. Law. Oct. 2009.

19.851 Closed sessions by government accountability board. The government accountability board shall hold each meeting of the board for the purpose of deliberating concerning an investigation of any violation of the law under the jurisdiction of the ethics and accountability division of the board in closed session under this section. Prior to convening under this section, the government accountability board shall vote to convene in closed session in the manner provided in s. 19.85 (1). No business may be conducted by the government accountability board at any closed session under this section except that which relates to the purposes of the session as authorized in this section or as authorized in s. 19.85 (1).

History: 2007 a. 1.

19.86 Notice of collective bargaining negotiations. Notwithstanding s. 19.82 (1), where notice has been given by either party to a collective bargaining agreement under subch. I, IV, V, or VI of ch. 111 to reopen such agreement at its expiration date, the employer shall give notice of such contract reopening as provided in s. 19.84 (1) (b). If the employer is not a governmental

body, notice shall be given by the employer's chief officer or such person's designee.

History: 1975 c. 426; 1987 a. 305; 1993 a. 215; 1995 a. 27; 2007 a. 20; 2009 a. 28.

19.87 Legislative meetings. This subchapter shall apply to all meetings of the senate and assembly and the committees, subcommittees and other subunits thereof, except that:

(1) Section 19.84 shall not apply to any meeting of the legislature or a subunit thereof called solely for the purpose of scheduling business before the legislative body; or adopting resolutions of which the sole purpose is scheduling business before the senate or the assembly.

(2) No provision of this subchapter which conflicts with a rule of the senate or assembly or joint rule of the legislature shall apply to a meeting conducted in compliance with such rule.

(3) No provision of this subchapter shall apply to any partisan caucus of the senate or any partisan caucus of the assembly, except as provided by legislative rule.

(4) Meetings of the senate or assembly committee on organization under s. 71.78 (4) (c) or 77.61 (5) (b) 3. shall be closed to the public.

History: 1975 c. 426; 1977 c. 418; 1987 a. 312 s. 17.

Sub. (3) applied to a closed meeting of the members of one political party on a legislative committee to discuss a bill. *State ex rel. Lynch v. Conta*, 71 Wis. 2d 662, 239 N.W.2d 313 (1976).

19.88 Ballots, votes and records. (1) Unless otherwise specifically provided by statute, no secret ballot may be utilized to determine any election or other decision of a governmental body except the election of the officers of such body in any meeting.

(2) Except as provided in sub. (1) in the case of officers, any member of a governmental body may require that a vote be taken at any meeting in such manner that the vote of each member is ascertained and recorded.

(3) The motions and roll call votes of each meeting of a governmental body shall be recorded, preserved and open to public inspection to the extent prescribed in subch. II of ch. 19.

History: 1975 c. 426; 1981 c. 335 s. 26.

Under sub. (1), a common council may not vote to fill a vacancy on the common council by secret ballot. 65 Atty. Gen. 131.

19.89 Exclusion of members. No duly elected or appointed member of a governmental body may be excluded from any meeting of such body. Unless the rules of a governmental body provide to the contrary, no member of the body may be excluded from any meeting of a subunit of that governmental body.

History: 1975 c. 426.

19.90 Use of equipment in open session. Whenever a governmental body holds a meeting in open session, the body shall make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This section does not permit recording, filming or photographing such a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

History: 1977 c. 322.

19.96 Penalty. Any member of a governmental body who knowingly attends a meeting of such body held in violation of this subchapter, or who, in his or her official capacity, otherwise violates this subchapter by some act or omission shall forfeit without reimbursement not less than \$25 nor more than \$300 for each such violation. No member of a governmental body is liable under this subchapter on account of his or her attendance at a meeting held in violation of this subchapter if he or she makes or votes in favor

of a motion to prevent the violation from occurring, or if, before the violation occurs, his or her votes on all relevant motions were inconsistent with all those circumstances which cause the violation.

History: 1975 c. 426.

The state need not prove specific intent to violate the Open Meetings Law. *State v. Swanson*, 92 Wis. 2d 310, 284 N.W.2d 655 (1979).

19.97 Enforcement. (1) This subchapter shall be enforced in the name and on behalf of the state by the attorney general or, upon the verified complaint of any person, by the district attorney of any county wherein a violation may occur. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

(2) In addition and supplementary to the remedy provided in s. 19.96, the attorney general or the district attorney may commence an action, separately or in conjunction with an action brought under s. 19.96, to obtain such other legal or equitable relief, including but not limited to mandamus, injunction or declaratory judgment, as may be appropriate under the circumstances.

(3) Any action taken at a meeting of a governmental body held in violation of this subchapter is voidable, upon action brought by the attorney general or the district attorney of the county wherein the violation occurred. However, any judgment declaring such action void shall not be entered unless the court finds, under the facts of the particular case, that the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken.

(4) If the district attorney refuses or otherwise fails to commence an action to enforce this subchapter within 20 days after receiving a verified complaint, the person making such complaint may bring an action under subs. (1) to (3) on his or her relation in the name, and on behalf, of the state. In such actions, the court may award actual and necessary costs of prosecution, including reasonable attorney fees to the relator if he or she prevails, but any forfeiture recovered shall be paid to the state.

(5) Sections 893.80 and 893.82 do not apply to actions commenced under this section.

History: 1975 c. 426; 1981 c. 289; 1995 a. 158.

Judicial Council Note, 1981: Reference in sub. (2) to a "writ" of mandamus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613-A]

Awards of attorney fees are to be at a rate applicable to private attorneys. A court may review the reasonableness of the hours and hourly rate charged, including the rates for similar services in the area, and may in addition consider the peculiar facts of the case and the responsible party's ability to pay. *Hodge v. Town of Turtle Lake*, 190 Wis. 2d 181, 526 N.W.2d 784 (Ct. App. 1994).

Actions brought under the open meetings and open records laws are exempt from the notice provisions of s. 893.80 (1). *Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 547 N.W.2d 587 (1996), 94–2809.

Failure to bring an action under this section on behalf of the state is fatal and deprives the court of competency to proceed. *Fabyan v. Achtenhagen*, 2002 WI App 214, 257 Wis. 2d 310, 652 N.W.2d 649, 01–3298.

Complaints under the open meetings law are not brought in the individual capacity of the plaintiff but on behalf of the state, subject to the 2-year statute of limitations under s. 893.93 (2). *Leung v. City of Lake Geneva*, 2003 WI App 129, 265 Wis. 2d 674, 666 N.W.2d 104, 02–2747.

When a town board's action was voided by the court due to lack of statutory authority, an action for enforcement under sub. (4) by an individual as a private attorney general on behalf of the state against individual board members for a violation of the open meetings law that would subject the individual board members to civil forfeitures was not rendered moot. *Lawton v. Town of Barton*, 2005 WI App 16, 278 Wis. 2d 388, 692 N.W.2d 304, 04–0659

19.98 Interpretation by attorney general. Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances.

History: 1975 c. 426.

APPENDIX B

SAMPLE OPEN MEETINGS LAW COMPLAINT FORM

VERIFIED OPEN MEETINGS LAW COMPLAINT

Now comes the complainant _____ and as and for a verified complaint pursuant to Wis. Stat. §§ 19.96 and 19.97, alleges and complains as follows:

1. That he is a resident of the _____ [town, village, city] of _____, Wisconsin, and that his or her Post Office Address is _____ [street, avenue, etc.] _____, Wisconsin _____ [zip].

2. That _____ [name of member or chief presiding officer] whose Post Office Address is _____ [street, avenue, etc.], _____ [city], Wisconsin, was on the _____ day of _____ 200_, a _____ [member or chief presiding officer] of _____ designate official title of governmental body] and that such _____ [board, council, commission or committee] is a governmental body within the meaning of Wis. Stat. § 19.82(1).

3. That _____ [name of member or chief presiding officer] on the _____ day of _____, 200_, at _____ County of _____, Wisconsin, knowingly attended a meeting of said governmental body held in violation of Wis. Stat. § 19.96 and _____ [cite other applicable section(s)], or otherwise violated those sections in that [set out every act or omission constituting the offense charged]:

4. That _____ [name of member or chief presiding officer] is thereby subject to the penalties prescribed in Wis. Stat. § 19.96.

5. That the following witnesses can testify to said acts or omissions:

| Name | Address | Telephone |
|-------|---------|-----------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

6. That the following documentary evidence of said acts or omissions is available:

7. That this complaint is made to the District Attorney for _____ County under the provisions of Wis. Stat. § 19.97, and that the district attorney may bring an action to recover the forfeiture provided in Wis. Stat. § 19.96.

WHEREFORE, complainant prays that the District Attorney for _____ County, Wisconsin, timely institute an action against _____ [name of member or chief presiding officer] to recover the forfeiture provided in Wis. Stat. § 19.96, together with reasonable costs and disbursements as provided by law.

STATE OF WISCONSIN)
) ss.
COUNTY OF _____)

_____ being first duly sworn on oath deposes and says that ___he is the above-named complainant, that ___he has read the foregoing complaint and that, based on his or her knowledge, the contents of the complaint are true.

COMPLAINANT

Subscribed and sworn to before me
this ____ day of _____, 200_.

Notary Public, State of Wisconsin
My Commission: _____

**REFERENCE MATERIALS:
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AND STATUTES CITED**

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January 4, 2014

Mr. Tom Ryan, Executive Director
Medical Examining Board
Wisconsin Department of Safety and Professional Services
PO Box 8935
Madison, WI 53708-8935

Dear Mr. Ryan,

My name is Josh Miller and I am a physician assistant living in Franklin, Wisconsin. I graduated from the University of Wisconsin-La Crosse/Gundersen/Mayo Physician Assistant Program in May of 2013 and moved to the Milwaukee area from Rochester, Minnesota in September, specifically for the purpose of beginning my first job as a physician assistant in neurosurgery.

I worked with Dr. Alexander Hawkins, a respected neurosurgeon in the Milwaukee area, from September 2013 to December 2013. Due to unforeseen circumstances, Dr. Hawkins moved out of the Milwaukee area to pursue other opportunities. This left me in a difficult situation, without a job after only three months of work. During my time with Dr. Hawkins, I had the opportunity to work alongside another neurosurgeon, Dr. Shekhar Dagam, as he and my supervising physician would cover for each other on occasion. I enjoyed my time with Dr. Dagam and his staff (two physician assistants and one nurse practitioner) and really respected the compassion and efficiency that was evident in the practice.

Dr. Dagam contacted me shortly after he learned of my situation and offered to help in any way possible. He stated he was looking to expand his practice and hire more providers due to the increasing caseload and new patient population he and his team were experiencing. His only hesitation was the Wisconsin statute that a physician can only supervise two physician assistants at any given time.

After speaking with Dr. Dagam, I researched the Wisconsin Chapter Med 8.10 statute and found that it allowed for more than two physician assistants to be supervised concurrently as long as a written plan was submitted by the supervising physician and approved by the board; Dr. Dagam and I hope you will consider our request.

We were recently made aware that while revisions to Chapter Med 8 (including a new 4:1 physician assistant/supervising physician ratio) have been publically approved and passed through the full committee review process, the new rule has not yet been published and may not be until April. Dr. Dagam and I would like to respectfully request a waiver of the pending timeline for the changes to be published in order to allow me the opportunity to resume work in Wisconsin as a physician assistant. Not only would a waiver of the timeframe put me back to work, but would help expand access to care for the patients in Dr. Dagam's busy practice.

For more than a year, Dr. Dagam has supervised three midlevel providers (two PAs and one NP) without issue, and patient satisfaction relating to the quality and effectiveness of care provided by Dr. Dagam

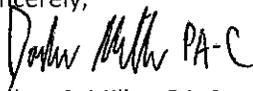
and his team has been strong on a consistent basis. Even though the practice is increasingly busy, Dr. Dagam takes time to review each patient chart after dialoging with his midlevel providers. In cases of emergency, Dr. Dagam is immediately accessible by phone or page, and is never more than ten minutes away.

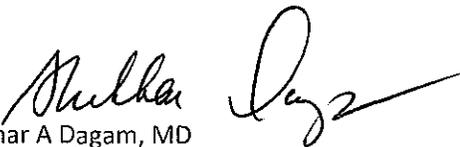
Dr. Dagam and his team are confident that an additional PA in the practice will not only be manageable, but necessary to continue providing safe, quality patient care. We hope you and the Medical Examining Board will agree to our request.

If I can answer any questions or concerns, please contact me directly at [REDACTED] or by phone at [REDACTED]. You may also contact Dr. Dagam at [REDACTED].

Thank you in advance for your time and consideration. Your assistance is greatly appreciated. We look forward to hearing from you soon.

Sincerely,


Joshua D Miller, PA-C


Shekhar A Dagam, MD

January 9, 2014

Physician Assistant Supervision Plan

Dr. Dagam has two physician assistants and one advanced practice nurse. He has supervised these two physician assistants and worked collaboratively with advanced practice nurse for over a year with no issues. There has been a loss of four neurosurgeons at St. Luke's Medical Center in the last twelve months and Dr. Dagam's outpatient and inpatient practice has tremendously increased. Because of this, he is looking to hire more employees, including another mid-level provider in order to allow his current physician assistants to work fewer hours. He extended this offer to me shortly after I was notified that my supervising physician would be relocating. Due to the 2:1 physician/physician assistant ratio in Wisconsin, we discussed the following plan until the new 4:1 ratio is officially written into law.

- **Shifts/Staffing:** Dr. Dagam plans to have each physician assistant provider work only four days during the week. This schedule would rotate so that at no time would more than two physician assistants be working and consequently only two PAs would need supervision. The advanced practice nurse would continue to work collaboratively with Dr. Dagam and consult him on a daily basis.
- The schedule, for example, would consist of physician assistant A working Monday to Thursday, physician assistant B would work Friday to Monday and then physician assistant C would work Tuesday to Friday.
 - The weekend schedule would be much lighter as Dr. Dagam usually only has one or two mid-level providers round with him on the weekends. Again, this would rotate so the same mid-level/s would not be working every weekend.
 - On surgical days, only one mid-level provider assists Dr. Dagam for each case.
- **Supervision:** As stated above, Dr. Dagam would not be supervising more than two physician assistant providers at any point in time.
 - In the both the inpatient and outpatient settings, Dr. Dagam evaluates every patient personally after they are seen by the mid-level providers, so he is either within talking distance or is available by page or phone at all times.
 - In case of emergency, he is readily accessible by phone or page (even in surgery) and is never more than ten minutes away.
 - When the mid-level providers are rounding on patients in the hospital, an attending physician for each floor is readily available if any questions or problems should suddenly arise.
- **Patient safety:** Patient safety has always been a crucial aspect of Dr. Dagam's practice. The patient always comes first and it is vital that their needs be met and their questions answered promptly. This can only occur if there is a sufficient number of providers available. With Dr. Dagam's increasing patient population and caseload, it is only logical that he would pursue more

help to reduce work load and fatigue on his current physician assistants while trying to maintain a high level of service and patient care. An additional physician assistant would meet this need.

In summary, with current neurosurgeon shortage at Aurora St. Luke's Medical Center, Dr. Dagam would like to hire an additional physician assistant to help meet the neurosurgical needs of the patient population in Milwaukee. Dr. Dagam feels I would be particularly suited to his practice as I have had experience in my previous employment as a neurosurgery physician assistant. As his practice continues to expand, hiring another mid-level provider is the next logical step to continue the current level of patient care and safety while easing the burden on the current providers. Dr. Dagam would never be supervising more than two physician assistant providers on a given day as a rotating schedule would be utilized. Weekend rounds would only require one to two mid-levels. Dr. Dagam is always available either in person or by page or phone. With the new 4:1 physician assistant/physician ratio already passed publically and through committee, we believe this proposal outlines a viable plan that can be successfully implemented until the new law is officially published. Thank you again for your time and consideration. We look forward to hearing from you soon.

Sincerely,

Joshua D Miller, PA-C
Shekhar A Dagam, MD