



MEDICAL EXAMINING BOARD
Room 121A, 1400 East Washington Avenue, Madison
Contact: Tom Ryan (608) 266-2112
August 17, 2016

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 (1-4)**
- B) Minutes of July 20, 2016 – Review and Approval (5-10)**
- C) Administrative Updates**
 - 1) Department and Staff Updates
 - 2) Board Members – Term Expiration Dates
 - a) Mary Jo Capodice – 07/01/2018
 - b) Michael Carton – 07/01/2020
 - c) Rodney Erickson – 07/01/2019
 - d) Bradley Kudick – 07/01/2020
 - e) Lee Ann Lau – 07/01/2020
 - f) Suresh Misra – 07/01/2015
 - g) Carolyn Ogland Vukich – 07/01/2017
 - h) Michael Phillips – 07/01/2017
 - i) David Roelke – 07/01/2017
 - j) Kenneth Simons – 07/01/2018
 - k) Timothy Westlake – 07/01/2020
 - l) Russel Yale – 07/01/2020
 - m) Robert Zondag – 07/01/2018
 - 3) Introductions, Announcements and Recognition
 - 4) Wis. Stat. § 15.085 (3)(b) – Affiliated Credentialing Boards’ Biannual Meeting with the Medical Examining Board to Consider Matters of Joint Interest
 - 5) Informational Items
- D) Welcome New Members**
- E) Appointments, Reappointments, Confirmations, and Committee, Panel and Liaison Appointments**
- F) Legislation and Rule Matters – Discussion and Consideration (11-20)**
 - 1) Med 13 Relating to Continuing Medical Education for Prescribing Opioids
 - a) Recommendations from InforMed
 - b) Review of Draft Rule Language
 - 2) Review of Draft Rule Language for MED 1 and 14 Relating to General Update and Cleanup of Rules
 - 3) Update on Pending Legislation and Possible and Pending Rulemaking Projects

- G) Report From the Telemedicine Rule Committee**
- H) Interstate Medical Licensure Compact Commission – Report from Wisconsin’s Commissioners**
- I) Federation of State Medical Boards (FSMB) Matters**
- J) Speaking Engagement(s), Travel, or Public Relation Request(s), and Report(s)**
- K) Screening Panel Report**
- L) Continuing Education Audit Report (21-22)**
- M) Newsletter Matters**
- N) Informational Items (23-24)**
 - 1) AMA Principles of Medical Ethics
- O) Items Added After Preparation of Agenda**
 - 1) Introductions, Announcements and Recognition
 - 2) Administrative Updates
 - 3) Elections, Appointments, Reappointments, Confirmations, and Committee, Panel and Liaison Appointments
 - 4) Education and Examination Matters
 - 5) Credentialing Matters
 - 6) Practice Matters
 - 7) Future Agenda Items
 - 8) Legislation/Administrative Rule Matters
 - 9) Liaison Report(s)
 - 10) Newsletter Matters
 - 11) Annual Report Matters
 - 12) Informational Item(s)
 - 13) Disciplinary Matters
 - 14) Presentations of Petition(s) for Summary Suspension
 - 15) Presentation of Proposed Stipulation(s), Final Decision(s) and Order(s)
 - 16) Presentation of Proposed Decisions
 - 17) Presentation of Interim Order(s)
 - 18) Petitions for Re-Hearing
 - 19) Petitions for Assessments
 - 20) Petitions to Vacate Order(s)
 - 21) Petitions for Designation of Hearing Examiner
 - 22) Requests for Disciplinary Proceeding Presentations
 - 23) Motions
 - 24) Petitions
 - 25) Appearances from Requests Received or Renewed
 - 26) Speaking Engagement(s), Travel, or Public Relation Request(s), and Reports
- P) Future Agenda Items**
- Q) Public Comments**

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

- R) Background Checks for Applicants – Discussion and Consideration**
- S) Request for Waiver of 24 Month of ACGME/AOA Approved Post Graduate Training**
 - 1) Sakthivel Rajan Rajaram Manoharan (25-64)
 - 2) Raphael Sacho (65-114)

- T) Voluntary Surrender Request**
 - 1) Kendall Capecci, M.D. **(115-116)**

- U) Deliberation on Division of Legal Services and Compliance (DLSC) Matters**
 - 1) Monitoring
 - 2) Complaints**
 - a) 15 MED 117 – C.D.M. **(117-120)**
 - b) 15 MED 341 – P.A.K. **(121-124)**
 - 3) Administrative Warnings**
 - a) 16 MED 088 – T.L.H. **(125-126)**
 - 4) Proposed Stipulations, Final Decisions and Orders**
 - a) 12 MED 289 – Levi Leong, M.D. **(127-132)**
 - b) 15 MED 081 – Amy Bernards, P.A. **(133-141)**
 - c) 15 MED 081 – Jennifer Nale, P.A. **(142-150)**
 - d) 15 MED 385 – Michael Umland, M.D. **(151-156)**
 - 5) Case Closings**
 - a) 14 MED 205 **(157-164)**
 - b) 15 MED 069 **(165-168)**
 - c) 15 MED 231 **(169-177)**
 - d) 15 MED 469 **(178-189)**

- V) Proposed Final Decision and Order in the Matter of Disciplinary Proceedings Against Barry S. Barudin, M.D., Respondent, DHA Case No. SPS-16-0042/DLSC Case No. 15 MED 420 (190-198)**

- W) Open Cases**

- X) Consulting With Legal Counsel**

- Y) 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) Proposed Stipulations, Final Decisions and Orders
 - 8) Administrative Warnings
 - 9) Proposed Decisions
 - 10) Matters Relating to Costs
 - 11) Complaints
 - 12) Case Closings
 - 13) Case Status Report
 - 14) Petition(s) for Extension of Time
 - 15) Proposed Interim Orders
 - 16) Petitions for Assessments and Evaluations
 - 17) Petitions to Vacate Orders
 - 18) Remedial Education Cases
 - 19) Motions
 - 20) Petitions for Re-Hearing
 - 21) Appearances from Requests Received or Renewed

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

- Z) Open Session Items Noticed Above not Completed in the Initial Open Session**

AA) Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

BB) Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

ADJOURNMENT

ORAL EXAMINATION OF ZERO (0) CANDIDATES FOR LICENSURE

ROOM 124D/E

10:30 A.M., OR IMMEDIATELY FOLLOWING THE FULL BOARD MEETING

CLOSED SESSION – Reviewing Applications and Conducting Oral Examinations of Zero (0) Candidates for Licensure – Dr. Ogland and Dr. Simons

NEXT MEETING DATE SEPTEMBER 21, 2016

**MEDICAL EXAMINING BOARD
MEETING MINUTES
July 20, 2016**

PRESENT: Mary Jo Capodice, D.O.; Michael Carton (*arrived at 8:04 a.m. via GoToMeeting;*) Rodney Erickson, M.D.; Lee Ann Lau, M.D.; Suresh Misra, M.D.; Michael Phillips, M.D. (*via GoToMeeting;*) David Roelke, M.D.; Timothy Westlake, M.D.; Russell Yale, M.D.; Robert Zondag

EXCUSED: Bradley Kudick; Carolyn Ogland Vukich, M.D.

STAFF: Brittany Lewin, Executive Director; Nifty Lynn Dio, Bureau 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) members was confirmed.

ADOPTION OF AGENDA

MOTION: Suresh Misra moved, seconded by David Roelke, to adopt the agenda as published. Motion carried unanimously.

MINUTES OF JUNE 15, 2016 – REVIEW AND APPROVAL

MOTION: David Roelke moved, seconded by Timothy Westlake, to approve the minutes of June 15, 2016 as published. Motion carried unanimously.

APPOINTMENTS, REAPPOINTMENTS, CONFIRMATIONS, AND COMMITTEE, PANEL AND LIAISON APPOINTMENTS

LIAISON APPOINTMENTS

2016 LIAISON APPOINTMENTS	
Professional Assistance Procedure (PAP) Liaison	Mary Jo Capodice Alternate – Michael Phillips
Office of Education and Examinations Liaison	Timothy Westlake Alternate – David Roelke
Website Liaison	Robert Zondag Alternate – Michael Carton
Credentialing Liaison(s)	David Roelke, Rodney Erickson Alternate – Russell Yale, Carolyn Ogland Vukich
Legislative Liaison	Timothy Westlake
Maintenance of Licensure Liaisons	Rodney Erickson, Carolyn Ogland Vukich Alternate – Mary Jo Capodice
Newsletter Liaison	Kenneth Simons Alternate – Robert Zondag

Monitoring Liaison	Mary Jo Capodice Alternate – Timothy Westlake
Continuing Education Liaison	Rodney Erickson Alternate – David Roelke
Administrative Rules Liaison	Russell Yale Alternate – David Roelke
Prescription Drug Monitoring Program Liaison	Timothy Westlake Alternate – Mary Jo Capodice
Disciplinary Guidelines Committee	Lee Ann Lau, Kenneth Simons
Appointed to Controlled Substances Board as per Wis. Stats. §15.405(5g) (MED)	Timothy Westlake

MOTION: David Roelke moved, seconded by Suresh Misra, to affirm the Chair’s appointment of replacement liaisons for 2016. Motion carried unanimously.

LEGISLATIVE/ADMINISTRATIVE RULE MATTERS

(Michael Carton joined via GoToMeeting at 8:04 a.m.)

Guidelines Regarding Best Practices in Prescribing Controlled Substances

MOTION: Mary Jo Capodice moved, seconded by David Roelke, to approve the Opioid Prescribing Guideline presented by Timothy Westlake as presented. Motion carried unanimously.

SPEAKING ENGAGEMENTS, TRAVEL, OR PUBLIC RELATION REQUESTS, AND REPORTS

Citizen Advocacy Center 2016 Annual Meeting on September 17-18, 2016 in Portland, Oregon – Consider Attendance

MOTION: Russell Yale moved, seconded by David Roelke, to delegate Robert Zondag to attend the IMLCC Website Development meeting in Eules, Texas on July 26-27, 2016 and to authorize travel. Motion carried unanimously.

MOTION: Robert Zondag moved, seconded by Rodney Erickson, to delegate Michael Carton to attend the Citizen Advocacy Center 2016 Annual Meeting on September 17-18, 2016 in Portland, Oregon and to authorize travel. Motion carried unanimously.

CONSIDERATION OF CREDENTIALING DELEGATED AUTHORITY

MOTION: Suresh Misra moved, seconded by Rodney Erickson, to delegate the authority to the DSPS Attorneys to review and approve ordinance violations which are not substantially related to the practice of medicine, limited to:

1. Littering
2. Loitering
3. Up to two (2) Underage Drinking
4. One (1) OWI two or more years prior to application

5. Public Urination
 6. Disorderly Conduct two or more years prior to application
 7. Trespassing
 8. Disturbing the Peace
- Motion carried unanimously.

MOTION: Lee Ann Lau moved, seconded by Mary Jo Capodice, to delegate authority to the DSPS Attorneys to review and approve conviction review for Medicine & Surgery (Physicians) applications which have previously been approved for a full Resident Educational License (REL) license after a criminal background check and there have been no new violations or convictions since the previous license approval. Motion carried unanimously.

MEDICAL EXAMINING BOARD – DIVISION OF LEGAL SERVICES AND COMPLIANCE ANNUAL REPORT – BOARD REVIEW AND APPROVAL

MOTION: Robert Zondag moved, seconded by David Roelke, to approve the 2015 Medical Examining Board, DLSC Annual Report as published. Motion carried unanimously.

CLOSED SESSION

MOTION: Mary Jo Capodice moved, seconded by Timothy Westlake, to convene to Closed Session to deliberate on cases following hearing (§ 19.85 (1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 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.). The Chair read the language of the motion aloud for the record. The vote of each member was ascertained by voice vote. Roll Call Vote: Mary Jo Capodice – yes; Michael Carton – yes; Rodney Erickson – yes; Lee Ann Lau – yes; Suresh Misra – yes; Michael Phillips – yes; David Roelke – yes; Kenneth Simons – yes; Timothy Westlake – yes; Russell Yale – yes; and Robert Zondag – yes. Motion carried unanimously.

The Board convened into Closed Session at 9:42 a.m.

RECONVENE TO OPEN SESSION

MOTION: Suresh Misra moved, seconded by Lee Ann Lau, to reconvene in Open Session at 11:14 a.m. Motion carried unanimously.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Timothy Westlake moved, seconded by Mary Jo Capodice, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

(Michael Phillips disconnected from the meeting at 9:50 a.m.)

APPEARANCE – DLSC ATTORNEY YOLANDA MCGOWAN, ATTORNEY JASON FRANCKOWIAK AND LORRIANE ASH, D.O. – REVIEW OF ADMINISTRATIVE WARNING WARN00000512/DLSC CASE NO. 15 MED 171

MOTION: Rodney Erickson moved, seconded by Timothy Westlake, to affirm the Administrative Warning in the matter of DLSC Case No. 15 MED 171 (L.A.). Motion carried. Opposed: Lau, Misra, Yale, Carton

(David Roelke recused himself and left the room for deliberation and voting in the matter concerning Lorriane Ash, DLSC Case No. 15 MED 171.)

FULL BOARD REVIEW

Application of Frank Miller, M.D.

MOTION: Timothy Westlake moved, seconded by Mary Jo Capodice, to find the scope and passing grades of the Indiana State Board examination (June 1977) is substantially equivalent to those of Wisconsin during June 1977. The Board therefore accepts the applicant's Indiana State Board examination in lieu of requiring further written or computer-based examinations. Board grants license once all requirements are met. Motion carried unanimously.

PETITION FOR EXAMINATION IN DLSC CASE NO. 14 MED 581, NANETTE J. LIEGEOIS, M.D.

MOTION: Mary Jo Capodice moved, seconded by Timothy Westlake, to grant the Division's request for an order requiring Respondent to undergo the requested psychiatric examination as the Board believes the results may be useful to the Board in conducting its hearing. Motion carried unanimously.

Complaint

14 MED 302

MOTION: Roelke moved, seconded by Misra, to find probable cause to believe that David Houlihan, M.D. DLSC Case No. 14 MED 302 has committed unprofessional conduct, and therefore to issue the Complaint and hold a hearing on such conduct pursuant to Wis. Stat § 448.02(3)(b). Motion carried unanimously.

(Rodney Erickson and Mary Jo Capodice recused themselves and left the room for deliberation and voting in the matter concerning David Houlihan, DLSC Case No. 14 MED 302.)

Administrative Warnings

14 MED 358

MOTION: Suresh Misra moved, seconded by Russell Yale, to issue an Administrative Warning in the matter of DLSC Case No. 14 MED 358 against A.C.P. Motion carried unanimously.

15 MED 462

MOTION: Timothy Westlake moved, seconded by Mary Jo Capodice, to issue an Administrative Warning in the matter of DLSC Case No. 15 MED 462 against J.B.V. Motion carried unanimously.

16 MED 101

MOTION: Mary Jo Capodice moved, seconded by Russell Yale, to issue an Administrative Warning in the matter of DLSC Case No. 16 MED 101 against D.F.S. Motion carried unanimously.

Proposed Stipulations, Final Decisions and Orders

15 MED 316 – Erik Branstetter, D.O.

MOTION: Suresh Misra moved, seconded by David Roelke, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Erik Branstetter, DLSC Case No. 15 MED 316. Motion carried unanimously.

15 MED 452 – Emmanuel Fantone, M.D.

MOTION: Timothy Westlake moved, seconded by David Roelke, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Emmanuel Fantone, DLSC Case No. 15 MED 452. Motion carried unanimously.

Case Closings

CASE CLOSING(S)

MOTION: Timothy Westlake moved, seconded by Mary Jo Capodice, to close the following cases according to the recommendations by the Division of Legal Services and Compliance:

1. 15 MED 300 (O.O.E.) **Prosecutorial Discretion (P5)**
2. 15 MED 304 (C.C.L.) **No Violation**
3. 15 MED 380 (T.A.C.) **Insufficient Evidence**
4. 15 MED 459 (L.F.Y.) **No Violation**
5. 15 MED 465 (K.H.R.) **Insufficient Evidence**
6. 15 MED 468 (M.A.Y.E.) **Insufficient Evidence**
7. 16 MED 034 (R.J.L.) **No Violation**
8. 16 MED 067 (J.P.F.) **No Violation**
9. 16 MED 153 (J.M.W.) **Prosecutorial Discretion (P3)**
10. 16 MED 183 (J.Z.) **No Violation**

Motion carried unanimously.

14 MED 244 – M.C.K.

MOTION: Mary Jo Capodice moved, seconded by Russell Yale, to close DLSC Case No. 14 MED 244 against M.C.K. for **Prosecutorial Discretion (P5-Flag)**. Motion carried unanimously.

15 MED 450

MOTION: Timothy Westlake moved, seconded by David Roelke, to close DLSC Case No. 15 MED 450 against J.A.P. for **Prosecutorial Discretion (P2)**. Motion carried unanimously.

(Rodney Erickson recused himself and left the room for deliberation and voting in the matter concerning J.A.P., DLSC Case No. 15 MED 450.)

PROPOSED FINAL DECISIONS AND ORDERS

Michael H. Malek, M.D. DHA Case No. SPS -16-0022/DLSC Case No. 15 MED 278

MOTION: David Roelke moved, seconded by Lee Ann Lau, to adopt the Proposed Final Decision and Order in the matter of disciplinary proceedings against Michael H. Malek, M.D., Respondent, DHA Case No. SPS-16-0022/DLSC Case No. 15 MED 278. Motion carried unanimously.

(Robert Zondag recused himself and left the room for deliberation and voting in the matter concerning Michael Malek, DLSC Case No. 15 MED 278.)

DELEGATION OF RATIFICATION OF EXAMINATION RESULTS AND RATIFICATION OF LICENSES AND CERTIFICATES

MOTION: David Roelke moved, seconded by Rodney Erickson, to delegate ratification of examination results to DSPS staff and to ratify all licenses and certificates as issued. Motion carried unanimously.

ADJOURNMENT

MOTION: David Roelke moved, seconded by Mary Jo Capodice, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 11:15 a.m.

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Dale Kleven Administrative Rules Coordinator		2) Date When Request Submitted: 8/5/16 Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Medical Examining Board			
4) Meeting Date: 8/17/16	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Legislation and Rule Matters – Discussion and Consideration 1. Med 13 Relating to Continuing Medical Education for Prescribing Opioids a. Recommendations from InforMed b. Review of Draft Rule Language 2. Review of Draft Rule Language for Med 1 and 14 Relating to General Update and Cleanup of Rules 3. Update on Pending Legislation and Possible and Pending Rulemaking Projects	
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: 			
11) Authorization <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="width: 40%; border-bottom: 1px solid black; padding-bottom: 5px;"> <i>Dale Kleven</i> Signature of person making this request </div> <div style="width: 40%; border-bottom: 1px solid black; padding-bottom: 5px; text-align: right;"> <i>August 5, 2016</i> Date </div> </div> <hr/> <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="width: 40%; border-bottom: 1px solid black; padding-bottom: 5px;"> Supervisor (if required) </div> <div style="width: 40%; border-bottom: 1px solid black; padding-bottom: 5px; text-align: right;"> Date </div> </div> <hr/> <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="width: 60%; border-bottom: 1px solid black; padding-bottom: 5px;"> Executive Director signature (indicates approval to add post agenda deadline item to agenda) </div> <div style="width: 30%; border-bottom: 1px solid black; padding-bottom: 5px; text-align: right;"> 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.			

July 29, 2016

Wisconsin Medical Examining Board
Attn: Dale Kleven, Administrative Rules Coordinator
Department of Safety and Professional Services
1400 East Washington Avenue, Room 112
Madison, WI 53703

RE: Rule Med 13 CME for Opioids

Mr. Kleven

We are writing today regarding the changes being proposed in Rule Med 13. As it is currently worded, this administrative rule calls for an effective starting date in (17) months and providing allopathic physicians with an additional (24) months and longer for osteopathic. For both allopathic and osteopathic physicians these periods can exceed *three years* to complete this educational requirement. We believe that it would be in the best interest of the health, safety and welfare of the people of Wisconsin if the effective date and completion date coincided with the remaining time left in the current licensure period for allopathic and osteopathic physicians.

The number of prescriptions for opioid painkillers declined in the United States during 2013-2015 and it is strongly believed that the role of mandated CME for physicians in this subject area, through state board and Federal requirements has played an integral part in physicians' understanding of the devastating effects of over-prescribing these medications and the influence of opioids and other prescription pain medications on the epidemic of abuse of pharmaceuticals in this country. Indeed, both the FDA and members of Congress have broached the subject of mandatory CME in this area of study directly to the American Medical Association (AMA), the American Academy of Family Physicians (AAFP), and the American College of Emergency Physicians (ACEP), indicating steps they feel the associations can take to address the prescription drug epidemic through CME. Historically, these organizations have expressed diametric opposition not only to mandated CME, but any form of regulatory CME, but the federal government and state agencies thereof have taken it upon themselves to intercede in this matter. We acknowledge the Wisconsin Board of Medical Examiners for breaking through this archaic position.

However, according to 2014 data (the most current available) from the National Institute on Drug Abuse,¹ this declining trend in prescribing has not resulted in a decline in death rates. In order to build upon this trend of providing physicians with the information necessary to further reduce over-prescription and to begin to reduce the mortality rates of pharmaceutical abuse, it is our opinion that this rule for Wisconsin licensed physicians should be worded to provide a specific start and completion date sooner rather than later.

Many states have acted with urgency to ensure that their prescribing physicians were presented with this critical information and education to curb misuse, addiction, and death due to invalid prescribing practices. For example, in 2015 in South Carolina, a similar 2 credit CME controlled substance, the medical board set an effective and completion dates were during the last six months of a two year licensure period. Hundreds of accredited CME programs, in live, online, print and other media formats were immediately available and 18,000 physicians met this prerequisite requirement for license renewal. Also in 2015, New Jersey implemented a 2-hour CME mandate to its physicians,

¹ "Overdose Death Rates." National Institute on Drug Abuse. <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates>. Revised December 2015, Accessed June 1, 2017.

allowing them only one year from the date of implementation to complete their requirement. A similar number of educational activities were available and 35,000 physicians met this prerequisite requirement for license renewal.

There is several hundred certified CME courses, thus no shortage of existing CME courses that have been designed around similar, if not identical, requirements as those in Rule Med 13, currently available in 2016-2017 to your licensees. Any claims that a sufficient number of educational activities are not available, state pain guidelines need to be developed to be incorporated into the educational activities, or sufficient time for licenses to complete this educational activity are not valid. Therefore, we strongly encourage Wisconsin to accept the urgency of this situation and act similarly to implement this requirement during the current licensure cycle ending 10/31/2017.

We believe you should also consider prohibiting courses that have been produced with commercial, manufacturer (industry) support, including any type of educational grant. A great deal of controversy has arisen over the opportunity for the pharmaceutical industry to guide or influence the creation of CME activities, particularly in this area, and this opportunity should be prohibited by rule.

Opioid misuse and abuse costs and deaths are not declining and abuses of other prescription medications only add to these numbers. It is for this reason, the benefit of the public health, safety and welfare, that we strongly urge you to consider language in rule Med 13. Specifically, to include a 2016 effective date of implementation and the requirement that the mandated CME be completed by October 31, 2017 for allopathic physicians and February 28, 2018, for osteopathic physicians, and similar dates for the next licensure cycle. Education *is* making a difference, but in order to have a meaningful effect on the epidemic of pharmaceutical misuse and abuse in the Wisconsin, requires urgency on effective starting and completion dates on rule Med 13.

Thank you on advance for your consideration in this matter.

Sincerely,

Joseph J. McGurrin

Federal, State and Regulatory CME Liaison

TEXT OF RULE

SECTION 1. Med 13.02 (1g) and (1r) are created to read:

Med 13.02 (1g) (a) Except as provided in pars. (b) and (c), for the renewal dates of November 1, 2019 and March 1, 2020, a minimum of 2 of the 30 hours of continuing medical education required under sub. (1) shall be an educational course or program related to best practices in prescribing opioids, including instruction in the guidelines issued by the board under s. 440.035 (2m), Stats., that is approved under s. Med 13.03 (3).

(b) For a physician who signs a statement on the application for registration certifying that between **August 1, 2016** and December 31, 2016, the physician completed the continuing medical education required under par. (a), a minimum of 2 of the 30 hours required under sub. (1) shall be related to responsible controlled substances prescribing.

(c) This subsection does not apply to a physician who, at the time of making application for a certificate of registration, does not hold a U.S. Drug Enforcement Administration number to prescribe controlled substances.

(1r) (a) Except as provided in pars. (b) and (c), for the renewal dates of November 1, 2021 and March 1, 2022, a minimum of 2 of the 30 hours of continuing medical education required under sub. (1) shall be an educational course or program related to best practices in prescribing opioids, including instruction in the guidelines issued by the board under s. 440.035 (2m), Stats., that is approved under s. Med 13.03 (3).

(b) For a physician who signs a statement on the application for registration certifying that the physician meets the requirement under sub. (1g) (a) or the exception under sub. (1g) (b), a minimum of 2 of the 30 hours required under sub. (1) shall be related to responsible controlled substances prescribing.

(c) This subsection does not apply to a physician who, at the time of making application for a certificate of registration, does not hold a U.S. Drug Enforcement Administration number to prescribe controlled substances.

SECTION 2. Med 13.03 (3) is created to read:

Med 13.03 (3) (a) Only educational courses and programs approved by the board may be used to satisfy the requirement under s. Med 13.02 (1g) (a) and (1r) (a). To apply for approval of a continuing education course or program, a provider shall submit to the board an application on forms provided by the department and shall include the title, general description and an outline of the course or program, the dates, the location, the name and qualifications of the instructor, and the sponsor of the course or program.

Note: An application for continuing education course or program approval may be obtained from the board at the Department of Safety and Professional Services, Office of Education and Examinations, P.O. Box 8366, Madison, Wisconsin, 53708, or from the department's website at <http://dsps.wi.gov>.

(b) A continuing education course or program must meet all of the following criteria to be approved:

1. The course or program is accepted by the board under sub. (1) (b).
2. The subject matter of the course pertains to best practices in prescribing opioids, including instruction in the guidelines issued by the board under s. 440.035 (2m), Stats.
3. The provider agrees to monitor the attendance and furnish a certificate of attendance to each participant. The certificate of attendance shall certify successful completion of the course or program.
4. The provider is approved by the board.
5. The course or program content and instructional methodologies are approved by the board.

(c) A separate application shall be submitted for each continuing education course or program approval request.

(d) A course or program sponsor may repeat a previously approved course or program without application, if the subject matter and instructor has not changed.

(END OF TEXT OF RULE)

TEXT OF RULE

SECTION 1. Med 1.01 is amended to read:

Med 1.01 Authority and purpose. The rules in this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5), 227.11, 448.05 (2) (c), and 448.40, Stats., and govern application and examination for license to practice medicine and surgery under s. 448.04 (1) (a), Stats., ~~(hereinafter “regular license”)~~.

SECTION 2. Med 1.015 (2m) is created to read:

Med 1.015 (2m) “Regular license” means a license to practice medicine and surgery under s. 448.04 (1) (a), Stats.

SECTION 3. Med 1.02 (2) and (3) (a), (b), and (c) are amended to read:

Med 1.02 (2) Verified documentary evidence of graduation from a medical or osteopathic school approved by the board. The board recognizes as approved those medical or osteopathic schools ~~recognized and approved~~ accredited at the time of the applicant's graduation therefrom by the American ~~osteopathic association~~ Osteopathic Association, or the ~~liaison committee on medical education~~ Liaison Committee on Medical Education, or their successors. If an applicant is not a graduate of a medical school approved by the board, but is a graduate of a medical school recognized and listed as such by the ~~world health organization of the united nations~~ World Directory of Medical Schools or its predecessor the International Medical Education Directory, such applicant shall submit verified documentary evidence of graduation from such school and also verified documentary evidence of having passed the examinations ~~conducted~~ required by the ~~educational council for foreign medical graduates~~ Educational Council for Foreign Medical Graduates or successors, and shall also present for the board's inspection the originals thereof, and if such medical school requires either social service or internship or both of its graduates, and if the applicant has not completed either such required social service or internship or both, such applicant shall also submit verified documentary evidence of having completed a 12 month supervised clinical training program under the direction of a medical school approved by the board.

(3) (a) Verification of satisfactory completion by the applicant of 24 months of postgraduate training in one or more programs accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or a successor organization; or documentary evidence that the applicant is currently enrolled in a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education, or the American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada, or a successor organization and has received credit for 12 consecutive months of postgraduate training in that program and an unrestricted endorsement from the postgraduate training director that the applicant is expected to complete at least 24 months of postgraduate training.

(b) If an applicant is a graduate of a foreign allopathic or osteopathic medical school, then the applicant must provide a verified certificate showing satisfactory completion of 24 months of postgraduate training in one or more programs accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, the Royal College of Physicians and Surgeons of Canada, or a successor organization; or documentary evidence that the applicant is currently enrolled in a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, the Royal College of Physicians and Surgeons of Canada, or a successor organization and has received credit for 12 consecutive months of postgraduate training in that program and an unrestricted endorsement from the postgraduate training director that the applicant is expected to complete at least 24 months of postgraduate training.

(c) If the applicant ~~is a graduate of a foreign allopathic or osteopathic medical school~~ possesses a medical license issued by another jurisdiction and has not completed 24 months of postgraduate training approved by the board and is not currently enrolled in a postgraduate training program but the applicant has other professional experience which the applicant believes has given that applicant the education and training substantially equivalent to 24 months of postgraduate training, then the applicant may submit the documented education and training demonstrating substantially equivalent education and training. The board will review the documented education and training and may make further inquiry, including a personal interview of the applicant, as the board deems necessary to determine whether substantial equivalence in fact exists. The burden of proof of such equivalence shall lie upon the applicant. If the board finds that the documented education and training is substantially equivalent to the required training and experience the board may ~~accept the experience in lieu of requiring the applicant to have completed 24 months of postgraduate training in a program approved by the board~~ grant a waiver of the requirements under par. (a) or (b).

SECTION 4. Med 1.02 (3) (cm) is created to read:

Med 1.02 (3) (cm) An applicant may apply to the board for waiver of the requirements of par. (a) or (b) on grounds of prolonged illness or disability or other similar circumstances, and each case will be considered individually on its merits by the board.

SECTION 5. Med 1.06 (1) (a) (intro.) and 9. and (d) are amended to read:

Med 1.06 (1) (a) (intro.) All applicants shall complete the ~~computer-based~~ examination under sub. (3) (b), ~~and an open book examination on statutes and rules governing the practice of medicine and surgery in Wisconsin.~~ In addition, an applicant may be required to complete an oral ~~interview~~ examination if the applicant:

9. Has ~~within the past 2 years~~ engaged in the illegal use of controlled substances.

~~(d) Written and computer-based~~ All written examinations and oral interviews examinations as required shall be scored separately and the applicant shall achieve a passing grade on all examinations to qualify for a license.

SECTION 6. Med 1.06 (2) is repealed.

SECTION 7. Med 1.06 (3) (a) and (b) are amended to read:

Med 1.06 (3) (a) The board accepts the results of the FLEX examination administered on or before December 31, 1993, as its written examination and requires a score of not less than ~~75.0 on each component of the 2-component~~ 75 on both Component 1 and Component 2 of the FLEX examination administered on or after January 1, 1985. ~~Every applicant shall have taken the complete 2-component examination the first time the applicant was admitted to the FLEX examination.~~

(b) Commencing January 1, 1994, the board ~~accepts~~ requires the 3-step USMLE sequence as its written or computer-based examination ~~and administers step 3 of the sequence. Minimum standard~~ The minimum passing scores score for each step Step 1, Step 2 CK, and Step 3 shall be not less than ~~75.0~~ 75 on the 2-digit scale. Step 2 CS, which is scored as pass or fail, shall be passed. Applicants who have completed a standard M.D. ~~training~~ or D.O. medical education program shall complete all 3 steps of the examination sequence within 10 years from the date upon which the applicant first passes a step, either ~~step~~ Step 1 or ~~step~~ Step 2. Applicants who have completed a combined M.D. ~~or D.O.~~ and Ph.D. medical scientist training program shall complete all 3 steps of the examination sequence within 12 years from the date upon which the applicant first passes a step, either ~~step~~ Step 1 or ~~step~~ Step 2. Applicants who have passed a step may not repeat the step unless required to do so in order to comply with the 10-year or 12-year time limit. If the applicant fails to achieve a passing grade on any step, the applicant may apply for and be reexamined on only the step failed ~~according to the reexamination provisions of s. Med 1.08 (1).~~

SECTION 8. Med 1.06 (3) (bm) is created to read:

Med 1.06 (3) (bm) The board shall waive completion of the 3-step USMLE sequence for an applicant who has passed all 3 levels of the Comprehensive Osteopathic Medical Licensing Examination, commonly known as the COMLEX-USA. The applicant shall have achieved a minimum passing score for Level 1, Level 2-CE, and Level 3 of not less than 75 on the 2-digit scale. Level 2-PE, which is scored as pass or fail, shall have been passed.

SECTION 9. Med 1.06 (3) (c), (d), (e), and (f) (intro.) and 2. are amended to read:

(c) Prior to ~~the~~ January 1, 2000, the board shall waive completion of ~~steps~~ Steps 1 and 2 of the USMLE sequence for applicants who have passed FLEX ~~component~~ Component 1; and shall waive ~~step~~ Step 3 of the USMLE sequence for applicants who have passed FLEX ~~component~~ Component 2. Prior to January 1, 2000, the board shall waive any step of the USMLE sequence for applicants who have passed the corresponding part of the NBME examination.

(d) The board may waive the requirement for written or computer-based examinations required in this section for any applicant who has achieved a an overall FLEX weighted average score of no less than ~~75.0 on all 3 components of~~ 75 on the FLEX examination taken prior to January 1, 1985 in a single session in another licensing jurisdiction in the United States or Canada, in no more than 3 attempts. If the applicant had been examined 4 or more times before achieving a weighted average score of no less than ~~75.0 on all 3 components~~ 75, the applicant shall meet the requirements specified in s. Med 1.08 (2).

(e) The board may waive the requirement for written or computer-based examinations required in this section for any applicant who has achieved a score of no less than ~~75.0~~ 75 ~~on each of the 2 components~~ Components 1 and 2 of the FLEX examination administered on or after January 1, 1985 in another licensing jurisdiction in the United States or Canada, if the applicant achieved a score of no less than ~~75.0~~ 75 on each of the 2 components in no more than 3 attempts. If the applicant has been examined 4 or more times before achieving a score of ~~75.0~~ 75 on either or both components of the FLEX examination, the applicant shall meet the requirements specified in s. Med 1.08 (2).

(f) **(intro.)** An applicant who has passed all ~~3~~ components of any of the examinations of the following boards and councils may submit to the board verified documentary evidence thereof, and the board will accept this in lieu of requiring further written or computer-based examination of the applicant-;

2. National Board of Osteopathic Medical Examiners of Osteopathic Physicians and Surgeons.

SECTION 10. Med 1.06 (4) is created to read:

(4) (a) An oral examination of an applicant is conducted by one or more physician members of the board. The purpose of an oral exam is to evaluate the applicant's eligibility for a regular license under the applicable circumstances specified in s. Med 1.06 (1) (a) 1. to 11. The passing grade for an oral exam under this paragraph is 90 percent.

(b) Any applicant who fails the oral examination under par. (a) shall be examined by the board. The grade of an exam under this paragraph shall be the applicant's final grade for the oral examination under this subsection. The passing grade for an exam under this paragraph is 90 percent.

SECTION 11. Med 1.06 (5), 1.07, and 1.08 (1) are repealed.

SECTION 12. Med 1.08 (2) is amended to read:

Med 1.08 (2) If an applicant has been examined 4 or more times in another licensing jurisdiction in the United States or Canada before achieving a passing grade in written or computer-based examinations also required under this chapter, the board may require the applicant to submit evidence satisfactory to the board of further professional

training or education in examination areas in which the applicant had previously demonstrated deficiencies. If the evidence provided by the applicant is not satisfactory to the board, the board may require the applicant to obtain further professional training or education as the board deems necessary to establish the applicant's fitness to practice medicine and surgery in this state. In order to determine any further professional training or education requirement, the board shall consider any information available relating to the quality of the applicant's previous practice, including the results of the applicant's performance on the oral ~~interview~~ examination required under s. 448.05 (6), Stats., and s. Med 1.06.

SECTION 13. Med 1.09 is repealed.

SECTION 14. Med 14.03 is amended to read:

Med 14.03 Each licensee shall register biennially with the board. Prior to ~~November 1 of each odd-numbered year~~ the renewal date under s. 440.08 (2), Stats., the department shall mail to each licensee at his or her last known address as it appears in the records of the board an application form for registration. Each licensee shall complete the application form and return it with the required fee to the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708 prior to the next succeeding November 1. The board shall notify the licensee within 30 business days of receipt of a completed registration form whether the application for registration is approved or denied.

SECTION 15. Med 14.06 (2) (intro.) is amended to read:

Med 14.06 (2) (intro.) Failure to renew a license by ~~November 1 of odd-numbered years~~ the renewal date under s. 440.08 (2), Stats., shall cause the license to lapse. A licensee who allows the license to lapse may apply to the board for reinstatement of the license as follows:

SECTION 16. 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)

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Nifty Lynn Dio, Bureau Assistant		2) Date When Request Submitted: 08/08/2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Medical Examining Board			
4) Meeting Date: 08/17/2016	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Physician Continuing Education Audit Compliance Report (M.D. 2013-2015, D.O. 2014-2016)	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: The Board shall review the attached audit report			
11) Authorization			
Nifty Lynn Dio		08/08/2016	
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.			

Physician Continuing Education Audit Compliance Report (M.D. 2013-2015, D.O. 2014-2016)

Physician M.D. (Reg Type 20) Audit

Of 1,153 licensees audited, 97 were not in compliance representing a 91.6 % compliance rate; following are reasons for noncompliance:

- 25 licensees had their final notices returned as 'undeliverable' by the post office
- 24 licensees returned the certified mail receipt, but did not submit any of the requested audit materials
- 10 licensees submitted less than 30 hours of acceptable CME
- Nine (9) licensees submitted a table that listed the required CME, but submitted no supporting documentation to verify it
- Eight (8) licensees submitted CME hours that occurred outside of the acceptable time period of 1/1/2014-12/31/2015
- Four (4) requested a voluntary surrender of their license
- Four (4) licensees submitted no CME
- Four (4) stated they were no longer practicing
- Three (3) licensees claimed retirement
- Three (3) licensees claimed medical hardship
- Two (2) licensee submitted hours that were not acceptable under Med 13.03
- One (1) licensee requested an extension to submit materials but never submitted anything further

Physician D.O. (Reg Type 21) Audit

Of 94 licensees audited, 5 were not in compliance representing a 94.7 % compliance rate; following are reasons for noncompliance:

- Three (3) licensees submitted a table that listed the required CME, but submitted no supporting documentation to verify it
- One (1) licensee submitted CME hours that occurred outside of the acceptable time period of 1/1/2014-12/31/2015
- One (1) licensee had their final notice returned as 'undeliverable' by the post office

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

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Nifty Lynn Dio, Bureau Assistant On behalf of Tom Ryan, Executive Director		2) Date When Request Submitted: 08/08/2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Medical Examining Board			
4) Meeting Date: 08/17/2016	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Informational Items AMA Principles of Medical Ethics	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required: N/A	
10) Describe the issue and action that should be addressed: AMA Principles of Medical Ethics <ol style="list-style-type: none"> 1. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights. 2. A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities. 3. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient. 4. A physician shall respect the rights of patients, colleagues, and other health professionals, and shall safeguard patient confidences and privacy within the constraints of the law. 5. A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated. 6. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care. 7. A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health. 8. A physician shall, while caring for a patient, regard responsibility to the patient as paramount. 9. A physician shall support access to medical care for all people. 			

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

Authorization	
Nifty Lynn Dio	
Signature of person making this request	Date
Supervisor (if required)	Date
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date	
Directions for including supporting documents:	
<ol style="list-style-type: none">1. This form should be attached to any documents submitted to the agenda.2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director.3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.	