



**VIRTUAL/TELECONFERENCE
MED 10 RULES COMMITTEE
MEDICAL EXAMINING BOARD**
Virtual, 4822 Madison Yards Way, Madison
Contact: Tom Ryan (608) 266-2112
April 8, 2022

*The following agenda describes the issues that the Committee 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 Committee. A **quorum of the Board may be present during any committee meetings.***

AGENDA

11:00 A.M.

OPEN SESSION – CALL TO ORDER – ROLL CALL

- A. Adoption of Agenda (1)**
- B. Administrative Matters – Discussion and Consideration**
 - 1. Department, Staff, and Committee Updates
- C. Administrative Rule Matters – Discussion and Consideration**
 - 1. Med 10, Relating to Performance of Physical Examinations **(2-4)**
- D. Next Steps**
- E. Public Comments**

ADJOURNMENT

MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Requests for interpreters for the deaf or hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer, 608-266-2112, or the Meeting Staff at 608-266-5439.

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Jameson Whitney, Legal Counsel		2) Date when request submitted: 3/31/2022 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>													
3) Name of Board, Committee, Council, Sections: MEB - Med 10 Rules Committee															
4) Meeting Date: 4/8/2022	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Administrative Rule Matters 1. Med 10, Relating to Performance of Physical Examinations													
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 <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if applicable: N/A													
10) Describe the issue and action that should be addressed: Review, discuss and modify the attached rule draft.															
11) Authorization <hr/> <table style="width: 100%; border: none;"> <tr> <td style="width: 70%; border: none;">Jameson Whitney</td> <td style="width: 30%; border: none; text-align: right;">3/31/2022</td> </tr> <tr> <td style="border: none;">Signature of person making this request</td> <td style="border: none; text-align: right;">Date</td> </tr> <tr> <td colspan="2" style="border: none;"><hr/></td> </tr> <tr> <td style="border: none;">Supervisor (Only required for post agenda deadline items)</td> <td style="border: none; text-align: right;">Date</td> </tr> <tr> <td colspan="2" style="border: none;"><hr/></td> </tr> <tr> <td style="border: none;">Executive Director signature (Indicates approval for post agenda deadline items)</td> <td style="border: none; text-align: right;">Date</td> </tr> </table>				Jameson Whitney	3/31/2022	Signature of person making this request	Date	<hr/>		Supervisor (Only required for post agenda deadline items)	Date	<hr/>		Executive Director signature (Indicates approval for post agenda deadline items)	Date
Jameson Whitney	3/31/2022														
Signature of person making this request	Date														
<hr/>															
Supervisor (Only required for post agenda deadline items)	Date														
<hr/>															
Executive Director signature (Indicates approval for post agenda deadline items)	Date														
Directions for including supporting documents: 1. This form should be saved with any other documents submitted to the Agenda Items folders. 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.															

TEXT OF RULE

SECTION 1. Med 10.02 (2m) and (5m) are created to read:

Med 10.02 (2m) “Chaperone” means an individual whom a physician provides to be present during an examination or inspection that exposes the breasts, genitals, or rectal area. This may include any person who has received basic training in the responsibility to protect patient privacy, the confidentiality of health information, and the requirements of clinical practice in the setting where the examination or inspection takes place. This training may be in-person, remote, or recorded, and need not be of any specific duration. Clinic staff, medical students or other allied health professional students, residents, or fellows are presumed to be appropriately trained to serve as chaperones.

(5m) “Observer” means an individual chosen by the patient to be present during an examination or inspection that exposes the breasts, genitals, or rectal area. A patient’s adult family member, legal guardian, or legal custodian is presumed to be able to act as an observer if the patient is twelve years of age or under.

SECTION 2. Med 10.03 (2)(f)4 is created to read:

Med 10.03 (2)(f)4. a. Regardless of the setting in which an examination or inspection that exposes the breasts, genitals, or rectal area takes place, or the sex or gender of the person performing the examination, the Board may make a rebuttable presumption that misconduct has occurred based on an allegation made under Med 10.03 (2)(f), unless one of the following applies and is properly documented in the patient record:

1. The examination is overseen by a chaperone as defined in Med 10.02 (2m) or another observer as defined in Med 10.02 (5m) chosen by the patient.
2. Failure to examine the patient would likely result in significant and imminent harm to the patient, including during a medical emergency.
3. After being adequately counseled on the use of a chaperone, the patient refuses a chaperoned examination. Any concerns a patient has may be elicited and addressed by the physician, where feasible. A signed informed consent document should be signed by the patient.
4. If, after counseling, the patient refuses a chaperone and signs an informed consent document, physicians are to respect the patient’s decision and document the details of the counseling, decision, consent document, and detailed reasons in the patient’s medical record.
5. If, after counseling, the patient refuses a chaperone and refuses to sign an informed consent document, a physician may refuse to perform the examination. Physicians must document the details of the counseling, decision, and detailed reasons in the patient’s medical record.
6. The examination is being performed in relation to an incident of interpersonal violence, and the physician reasonably believes that the presence of a chaperone

and/or counseling the patient regarding a chaperone will cause unnecessary trauma or is otherwise contraindicated. The examining physician shall document this determination in the patient record.

b. Notwithstanding the exceptions in par. a. of this subsection, the Board is not obligated to apply the presumption if it believes in its discretion that the application of the presumption would not be appropriate under the specific circumstances.

c. If the presumption under subsection (2)(f)4. a. is applied, it may be rebutted if the accused is able to present sufficient evidence to convince the Board that it is more likely than not that the alleged misconduct did not occur.

SECTION 3. 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)