



**VIRTUAL/TELECONFERENCE
MEDICAL EXAMINING BOARD
Virtual, 4822 Madison Yards Way, Madison
Contact: Tom Ryan (608) 266-2112
December 21, 2022**

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 (1-5)**
- B. Approval of Minutes of November 16, 2022 (6-9)**
- C. Introductions, Announcements and Recognition
- D. Reminders: Conflicts of Interest, Scheduling Concerns
- E. Administrative Matters – Discussion and Consideration**
 - 1) Department, Staff and Board Updates
 - 2) 2023 Meeting Dates **(10)**
 - 3) Board Members – Term Expiration Dates
 - a. Bond, Jr., Milton – 7/1/2023
 - b. Chou, Clarence P. – 7/1/2023
 - c. Ferguson, Kris – 7/1/2025
 - d. Gerlach, Diane M. – 7/1/2024
 - e. Goel, Sumeet K. – 7/1/2023
 - f. Lerma, Carmen – 7/1/2024
 - g. Parish, Michael A. – 7/1/2023
 - h. Sattler, Rachel E. – 7/1/2024
 - i. Schmeling, Gregory J. – 7/1/2025
 - j. Siebert, Derrick R. – 7/1/2025
 - k. Wasserman, Sheldon A. – 7/1/2023
 - l. Yerby, Lemuel G. – 7/1/2024
 - m. Yu, Emily S. – 7/1/2024
 - 4) Appointments, Reappointments, Confirmations, and Committee, Panel and Liaison Appointments**
 - 5) Wis. Stat. § 15.085 (3)(b) – Affiliated Credentialing Boards’ Biannual Meeting with the Medical Examining Board to Consider Matters of Joint Interest**

- a. Physician Assistant Affiliated Credentialing Board – Jennifer Jarrett, Chairperson **(11-13)**
- F. 8:00 A.M. PUBLIC HEARING: Clearinghouse Rule 22-067 on MED 13, Relating to Continuing Medical Education for Physicians (14-23)**
 - 1) Review Public Hearing Comments and Respond to Clearinghouse Report
- G. Legislative and Policy Matters – Discussion and Consideration**
 - 1) Possible Name Change of the Board
- H. Administrative Rule Matters – Discussion and Consideration (24)**
 - 1) MED 10, Relating to Physical Examinations **(25-32)**
 - a. Review Public Hearing Comments and Respond to Clearinghouse Report
 - 2) MED 26, Relating to Military Medical Personnel **(33-34)**
 - a. Review Rule Draft Language
 - 3) Pending or Possible Rulemaking Projects **(35)**
- I. Amended Medical Examining Board Opioid Prescribing Guideline – Discussion and Consideration (36-39)**
- J. Federation of State Medical Boards (FSMB) Matters – Discussion and Consideration**
 - 1) Consideration of Motion to Authorize Executive Director to Participate on FSMB Committee and Governance Positions
- K. Newsletter Matters – Discussion and Consideration
- L. COVID-19 – Discussion and Consideration
- M. Controlled Substances Board Report – Discussion and Consideration
- N. Interstate Medical Licensure Compact Commission (IMLCC) – Report from Wisconsin’s Commissioners – Discussion and Consideration
- O. Screening Panel Report
- P. Future Agenda Items
- Q. Discussion and Consideration of Items Added After Preparation of Agenda:
 - 1) Introductions, Announcements and Recognition
 - 2) Elections, Appointments, Reappointments, Confirmations, and Committee, Panel and Liaison Appointments
 - 3) Administrative Matters
 - 4) Election of Officers
 - 5) Appointment of Liaisons and Alternates
 - 6) Delegation of Authorities
 - 7) Education and Examination Matters
 - 8) Credentialing Matters
 - 9) Practice Matters
 - 10) Legislative and Policy Matters
 - 11) Administrative Rule Matters
 - 12) Liaison Reports
 - 13) Board Liaison Training and Appointment of Mentors

- 14) Informational Items
- 15) Division of Legal Services and Compliance (DLSC) Matters
- 16) Presentations of Petitions for Summary Suspension
- 17) Petitions for Designation of Hearing Examiner
- 18) Presentation of Stipulations, Final Decisions and Orders
- 19) Presentation of Proposed Final Decisions and Orders
- 20) Presentation of Interim Orders
- 21) Petitions for Re-Hearing
- 22) Petitions for Assessments
- 23) Petitions to Vacate Orders
- 24) Requests for Disciplinary Proceeding Presentations
- 25) Motions
- 26) Petitions
- 27) Appearances from Requests Received or Renewed
- 28) Speaking Engagements, Travel, or Public Relation Requests, and Reports

R. 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.).

S. Deliberation on DLSC Matters

- 1) Proposed Stipulations, Final Decisions and Orders**
 - a. 18 MED 486 – Carol M. Brown, D.O. **(40-48)**
 - b. 19 MED 300 – Steven G. Meress, M.D. **(49-56)**
 - c. 20 MED 171 & 20 MED 415 – Kwesi K. Grant-Acquah, M.D. **(57-68)**
 - d. 20 MED 284 – David E. Eckerle, M.D. **(69-76)**
 - e. 21 MED 527 – James J. Foskett, M.D. **(77-82)**
 - f. 21 MED 569 – Russell G. Gelormini, D.O. **(83-88)**
 - g. 22 MED 043 – Kedar Kulkarni, M.D. **(89-95)**
 - h. 22 MED 070 – Molly A. Day, M.D. **(96-102)**
 - i. 22 MED 104 – Michael S. Kim, M.D. **(103-109)**
 - j. 22 MED 104 – Shawn W. Laibly, M.D. **(110-116)**
 - k. 22 MED 115 – Saagar K. Raju, M.D. **(117-124)**
 - l. 22 MED 118 – Scott M. Stillwell, M.D. **(125-131)**
 - m. 22 MED 151 – Julie E. Faber, M.D. **(132-138)**
 - n. 22 MED 177 – Matthew F. H. Beeson, M.D. **(139-145)**
- 2) Proposed Stipulations and Interim Orders**
 - a. 21 MED 191 – Francis F. Joseph, M.D. **(146-151)**
- 3) Administrative Warnings**
 - a. 22 MED 056 – T.N.N. **(152-153)**
- 4) Complaints**
 - a. 21 MED 479 & 22 MED 009 & 22 MED 250 – E.P.H. **(154-161)**
- 5) Case Closings**
 - a. 20 MED 060 – R.J.D. **(162-179)**

- b. 20 MED 282 – L.C. **(180-183)**
- c. 20 MED 409 – S.S.K. **(184-190)**
- d. 21 MED 102 – N.Y. **(191-195)**
- e. 21 MED 200 – S.F.S. **(196-204)**
- f. 21 MED 242 – J.T.M. **(205-213)**
- g. 21 MED 277 – D.M.D. **(214-225)**
- h. 21 MED 350 – M.P. **(226-240)**
- i. 21 MED 377 – J.A.H. **(241-246)**
- j. 21 MED 391 – R.J.D. **(247-262)**
- k. 22 MED 095 – E.E. **(263-266)**
- l. 22 MED 103 – G.M. **(267-269)**
- m. 22 MED 294 – K.K. **(270-287)**
- n. 22 MED 295 – C.C. **(288-299)**
- o. 22 MED 299 – T.W.A. **(300-304)**
- p. 22 MED 312 – B.O.O. **(305-311)**
- q. 22 MED 366 – S.E.S. **(312-328)**
- r. 22 MED 402 – M.S.A. **(329-334)**
- s. 22 MED 410 – E.J.D. **(335-342)**
- t. 22 MED 468 – B.J. **(343-359)**

T. Credentialing Matters

1) Application Reviews

- a. David Stein – Medicine and Surgery (MD) Renewal Applicant

2) Full Board Oral Interviews

- a. **APPERANCE:** Michael Brown, (MD) Renewal Applicant **(360-374)**

U. Deliberation of Items Added After Preparation of the Agenda

- 1) Education and Examination Matters
- 2) Credentialing Matters
- 3) DLSC Matters
- 4) Monitoring Matters
- 5) Professional Assistance Procedure (PAP) Matters
- 6) Petitions for Summary Suspensions
- 7) Petitions for Designation of Hearing Examiner
- 8) Proposed Stipulations, Final Decisions and Order
- 9) Proposed Interim Orders
- 10) Administrative Warnings
- 11) Review of Administrative Warnings
- 12) Proposed Final Decisions and Orders
- 13) Matters Relating to Costs/Orders Fixing Costs
- 14) Complaints
- 15) Case Closings
- 16) Board Liaison Training
- 17) Petitions for Extension of Time
- 18) Petitions for Assessments and Evaluations
- 19) Petitions to Vacate Orders
- 20) Remedial Education Cases
- 21) Motions
- 22) Petitions for Re-Hearing

23) Appearances from Requests Received or Renewed

V. Open Cases

W. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

X. Vote on Items Considered or Deliberated Upon in Closed Session if Voting is Appropriate

Y. Open Session Items Noticed Above Not Completed in the Initial Open Session

Z. Delegation of Ratification of Examination Results and Ratification of Licenses and Certificates

ADJOURNMENT

ORAL INTERVIEWS OF CANDIDATES FOR LICENSURE

VIRTUAL/TELECONFERENCE

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

CLOSED SESSION – Reviewing Applications and Conducting Oral Interview(s) of **two (2)** (at time of agenda publication) Candidate(s) for Licensure – **Dr. Schmeling** and **Dr. Goel**

NEXT MEETING: JANUARY 18, 2023

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 virtually unless otherwise indicated. In-person meetings are typically conducted at 4822 Madison Yards Way, Madison, Wisconsin, unless an alternative location is listed on the meeting notice. In order to confirm a meeting or to request a complete copy of the board’s agenda, please visit the Department website at <https://dps.wi.gov>. 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 hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer, or reach the Meeting Staff by calling 608-267-7213.

**VIRTUAL/TELECONFERENCE
MEDICAL EXAMINING BOARD
MEETING MINUTES
NOVEMBER 16, 2022**

PRESENT: Milton Bond, Jr. (*arrived at 8:02 a.m. excused at 8:35 a.m.*); Kris Ferguson, M.D.; Diane Gerlach, D.O.; Sumeet Goel, D.O.; Michael Parish, M.D.; Rachel Sattler; Gregory Schmeling, M.D.; Derrick Siebert, M.D.; Sheldon Wasserman, M.D.; Emily Yu, M.D.

EXCUSED: Clarence Chou, M.D.; Carmen Lerma; Lemuel Yerby, M.D.

STAFF: Tom Ryan, Executive Director; Jameson Whitney, Legal Counsel; Nilajah Hardin, Administrative Rules Coordinator; Dialah Azam, Bureau Assistant; Kimberly Wood, Program Assistant Supervisor-Adv.; and other Department staff

CALL TO ORDER

Sheldon Wasserman, Chairperson, called the meeting to order at 8:00 a.m. A quorum was confirmed with eight (8) members present.

(Milton Bond, Jr. arrived at 8:02 a.m.)

ADOPTION OF AGENDA

Amendment to the Agenda

- Closed Session: Under item T. “Deliberation on DLSC Matters” **REMOVE** sub-item 3) “Administrative Warnings; a. 21 MED 375 – W.G.K.”

MOTION: Milton Bond, Jr. moved, seconded by Diane Gerlach, to adopt the Agenda as amended. Motion carried unanimously.

APPROVAL OF MINUTES OF OCTOBER 19, 2022

MOTION: Rachel Sattler moved, seconded by Michael Parish, to approve the Minutes of October 19, 2022 as published. Motion carried unanimously.

INTRODUCTIONS, ANNOUNCEMENTS AND RECOGNITION

MOTION: Gregory Schmeling moved, seconded by Milton Bond, Jr., to acknowledge Kimberly Wood for her years of service to the Medical Examining Board and thank her for her expertise through the tenures of the members of the Board. Motion carried unanimously.

(Milton Bond, Jr. left the meeting at 8:17 a.m., returned at 8:25 a.m., left the meeting at 8:35 a.m.)

ADMINISTRATIVE RULE MATTERS

Preliminary Rule Draft – AT 1 and 4, Relating to References to Consulting Physician

MOTION: Sumeet Goel moved, seconded by Michael Parish, to affirm the Board has reviewed the proposed rule revising Wisconsin Administrative Code Chapters AT 1 and 4, relating to References to Consulting Physician. Motion carried unanimously.

CLOSED SESSION

MOTION: Parish moved, seconded by Gerlach, 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.). Sheldon Wasserman, Chairperson, read the language of the motion aloud for the record. The vote of each member was ascertained by voice vote. Roll Call Vote: Kris Ferguson-yes; Diane Gerlach-yes; Sumeet Goel-yes; Michael Parish-yes; Rachel Sattler-yes; Gregory Schmeling-yes; Derrick Siebert-yes; Sheldon Wasserman-yes; and Emily Yu-yes. Motion carried unanimously.

The Board convened into Closed Session at 9:23 a.m.

DELIBERATION ON DIVISION OF LEGAL SERVICES AND COMPLIANCE (DLSC) MATTERS

Proposed Stipulations, Final Decisions and Orders

21 MED 548 – Eric J. Lawatsch, M.D.

MOTION: Diane Gerlach moved, seconded by Rachel Sattler, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Eric J. Lawatsch, M.D., DLSC Case Number 21 MED 548. Motion carried unanimously.

22 MED 041 – Farhaad Riyaz, M.D.

MOTION: Sumeet Goel moved, seconded by Gregory Schmeling, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Farhaad Riyaz, M.D., DLSC Case Number 22 MED 041. Motion carried unanimously.

22 MED 135 – David A. Lapidés, M.D.

MOTION: Rachel Sattler moved, seconded by Sumeet Goel, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against David A. Lapidés, M.D., DLSC Case Number 22 MED 135. Motion carried unanimously.

Complaints

21 MED 557 & 22 MED 044 – H.W.J.

MOTION: Sumeet Goel moved, seconded by Gregory Schmeling, to find probable cause in DLSC Case Numbers 21 MED 557 & 22 MED 044, to believe that H.W.J. 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.

(Rachel Sattler recused herself and left the room for deliberation and voting in the matter concerning 21 MED 557 & 22 MED 044, DLSC Case Number H.W.J.)

22 MED 235 – G.R.G.

MOTION: Michael Parish moved, seconded by Emily Yu, to find probable cause in DLSC Case Number 22 MED 235, to believe that G.R.G. 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.

(Rachel Sattler recused herself and left the room for deliberation and voting in the matter concerning 22 MED 235, DLSC Case Number G.R.G.)

Case Closings

MOTION: Sumeet Goel moved, seconded by Michael Parish, to close the following DLSC Cases for the reasons outlined below:

1. 21 MED 211 – M.D.H. – Prosecutorial Discretion (P1)
2. 21 MED 346 – K.D.W. – Prosecutorial Discretion (P1)
3. 21 MED 364 – J.M.B. – No Violation
4. 21 MED 414 – K.D. – No Violation
5. 21 MED 468 – F.H. – No Violation
6. 22 MED 030 – M.A.B., N.E.T. – No Violation
7. 22 MED 034 – K.L.O. – No Violation
8. 22 MED 049 – R.J.G. – Prosecutorial Discretion (P5)
9. 22 MED 090 – J.A.B., K.J.M. – No Violation
10. 22 MED 122 – R.L.S. – Prosecutorial Discretion (P1)
11. 22 MED 256 – Y.C.C. – No Violation
12. 22 MED 280 – N.S. – Insufficient Evidence
13. 22 MED 290 – F.M.D., A.K.M. – No Violation
14. 22 MED 317 – M.S.K. – No Violation
15. 22 MED 385 – S.O.S. – No Violation

Motion carried unanimously.

20 MED 196 – T.S.O.

MOTION: Sumeet Goel moved, seconded by Gregory Schmeling, to close DLSC Case Number 20 MED 196, against T.S.O., for Insufficient Evidence. Motion carried unanimously.

22 MED 376 – J.L.N.

MOTION: Michael Parish moved, seconded by Rachel Sattler, to close DLSC Case Number 22 MED 376, against J.L.N., for No Violation. Motion carried unanimously.

Monitoring Matters

Shannon Wiggins, D.O.

Requesting to obtain employment as a non-W2 employee who will not do their own billing

MOTION: Sumeet Goel moved, seconded by Kris Ferguson, to grant the request of Shannon Wiggins, D.O., for obtaining employment as a non-W2 employee who will not do their own billing. Motion carried unanimously.

RECONVENE TO OPEN SESSION

MOTION: Michael Parish moved, seconded by Gregory Schmeling, to reconvene to Open Session. Motion carried unanimously.

The Board reconvened to Open Session at 10:02 a.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Kris Ferguson moved, seconded by Gregory Schmeling, to affirm all motions made and votes taken in Closed Session. Motion carried unanimously.

(Be advised that any recusals or abstentions reflected in the closed session motions stand for the purposes of the affirmation vote.)

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

MOTION: Rachel Sattler moved, seconded by Michael Parish, to delegate ratification of examination results to DSPS staff and to ratify all licenses and certificates as issued. Motion carried unanimously.

ADJOURNMENT

MOTION: Sumeet Goel moved, seconded by Rachel Sattler, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 10:04 a.m.

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Dialah Azam, Bureau Assistant		2) Date when request submitted: 12/14/2022 <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: Medical Examining Board			
4) Meeting Date: 12/21/2022	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? 2023 Meeting Dates	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <Appearance Name(s)> <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: The Board will review and potentially make a motion to approve the follow 2023 meeting dates: a. Wednesday, January 18 2023, at 8:00 a.m. – Virtual b. Wednesday, February 15 2023, at 8:00 a.m. – Virtual c. Wednesday, March 15 2023, at 8:00 a.m. – Virtual d. Wednesday, April 19 2023, at 8:00 a.m. – In-Person e. Wednesday, May 17 2023, at 8:00 a.m. – Virtual f. Wednesday, June 21 2023, at 8:00 a.m. – Virtual g. Wednesday, July 19 2023, at 8:00 a.m. – Virtual h. Wednesday, August 16 2023, at 8:00 a.m. – Virtual i. Wednesday, September 20 2023, at 8:00 a.m. – Virtual j. Wednesday, October 18 2023, at 8:00 a.m. – In-Person k. Wednesday, November 15 2023, at 8:00 a.m. – Virtual l. Wednesday, December 20 2023, at 8:00 a.m. – Virtual			
11) Authorization			
<i>Dialah Azam</i>		12/14/2022	
Signature of person making this request		Date	
Supervisor (Only required for post agenda deadline items)		Date	
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.			

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Dialah Azam, Bureau Assistant		2) Date when request submitted: 12/15/2022 <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: Medical Examining Board			
4) Meeting Date: 12/21/2022	5) Attachments: <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? 1) Wis. Stat. § 15.085 (3)(b) – Affiliated Credentialing Boards’ Biannual Meeting with the Medical Examining Board to Consider Matters of Joint Interest Physician Assistant Affiliated Credentialing Board – Jennifer Jarrett, Chairperson	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <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: The Board can review the Physician Assistant Affiliated Credentialing Board letter that was approved to be sent to the Legislature.			
11) Authorization <hr/> <i>Dialah Azam</i> 12/15/2022 <hr/> 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.			

Physician Assistant Affiliated Credentialing Board

Department of Safety and Professional Services
4822 Madison Yards Way
PO Box 8366
Madison WI 53708-8366



November 30, 2022

Members, Wisconsin Legislature Joint Committee on Finance c/o
Committee Clerk Joe Malkasian
Submitted via email: joe.malkasian@legis.wisconsin.gov

RE: Department of Safety and Professional Services (DSPS) Staffing Challenges and Request for Action

Dear Committee Members,

I am writing on behalf of the Physician Assistant Affiliated Credentialing Board. We are a newly formed board which plays an integral role in the regulation and licensing of our profession. We have received an increasing number of complaints from licensees and employers regarding delays in the processing of Wisconsin licenses. Physician Assistants have had their employment start dates delayed, which has had a direct financial impact. Employers have been frustrated in the delays while trying to replace or expand staffing during a time of increasing demand for medical services. Patient care has been directly impacted by these delays.

Our board members have heard the repeated complaints of phone calls to the Department of Safety and Professional Services (DSPS) being unanswered, messages left at DSPS not being returned, and applicants not being able to get questions answered about their applications. We have also heard of delays in applications taking over four months in some cases. We know DSPS has made efforts to improve the application process with the integration of LicenseE, the new, online, self-guided occupational license application platform, but there are still staffing challenges that create continued delays.

The increasing demand for services from DSPS exceeds the staff and resources available. It is our understanding that the fee revenue collected from professionals applying for and renewing their licenses is sufficient to cover the existing staffing needs, but the spending authority set by the Legislature has been restricted to an amount below the fee revenue available. It is also our understanding that any amount above the spending authority ceiling is diverted by the Legislature for other state budget purposes completely unrelated to the Board's charge of physician assistant licensing and regulation. This limited spending authority has imposed barriers to hiring sufficient staff at DSPS to do the day-to-day work of processing applications. The significant increase in the volume of work, combined with too few employees, has resulted in staff shortages, employee burnout and a work environment that inhibits retention.

On March 24, 2022, the Physician Assistant Affiliated Credentialing Board made a motion to express our concern about these ongoing restrictions that have created backlogs in licensing physician assistants and to urge the Legislature to take immediate action to increase the staffing and spending authority of DSPS.

We appreciate your time and consideration.

Sincerely,



Jennifer Jarrett (On behalf of the Board)

Chairperson, Wisconsin Physician Assistant Affiliated Credentialing Board c:

Legislative Council Study Committee on Occupational Licensing

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Nilajah Hardin Administrative Rules Coordinator		2) Date when request submitted: 12/09/22 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: Pharmacy Examining Board			
4) Meeting Date: 12/21/22	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? 8:00 A.M. Public Hearing – Clearinghouse Rule 22-067 on Med 13, relating to Continuing Medical Education for Physicians 1. Review Public Hearing Comments and Respond to Clearinghouse Report	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <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 hold a Public Hearing on this rule as required by the rulemaking process.			
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.			

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Medical Examining Board to repeal Med 13.02 (1g), (1r), and (1v); 13.03 (3); and amend Med 13.02 (1x) (a), relating to Continuing Education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s.448.40 (1), Stats.

Statutory authority: ss. 15.08 (5) (b) and 448.40 (1), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides each examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 448.40 (1), Stats., provides that “[t]he board may promulgate rules to carry out the purposes of this subchapter, including rules requiring the completion of continuing education, professional development, and maintenance of certification or performance improvement or continuing medical education programs for renewal of a license to practice medicine and surgery.”

Related statute or rule: Chapter Med 14 provides the requirements for biennial registration, which include the completion of continuing medical education.

Plain language analysis:

The objective of this rule is to update ch. Med 13 to extend the requirement that 2 of the 30 required continuing medical education (CME) hours per biennium shall be in a course or program related to opioid prescribing and to modify the requirement to include courses or programs concerning controlled substances generally. Additionally, the Board will re-evaluate and modify or remove the requirement that educational programs related to opioid prescribing or controlled substances be pre-approved by the Board.

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

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: N/A

Comparison with rules in adjacent states:

Illinois: Rules of the Illinois Department of Financial and Professional Regulation establish continuing medical education requirements for physicians licensed in Illinois [68 Ill. Adm. Code 1285.110]. The rules do not require continuing education related to prescribing opioids or other controlled substances.

Iowa: Rules of the Iowa Board of Medicine establish continuing education requirements for physicians licensed in Iowa [653 IAC 11]. The rules require a licensee who has prescribed opioids to a patient during the previous license period to complete at least 2 hours of category 1 credit regarding the United States Centers for Disease Control and Prevention (CDC) guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, every 5 years [653 IAC 11.4(1) d. (1)].

Michigan: Rules of the Michigan Department of Licensing and Regulatory Affairs establish continuing medical education requirements for physicians licensed in Michigan [Mich Admin Code, R 338.2441 to R 338.2443]. The rules require a minimum of 3 hours of continuing education to be earned in pain and symptom management, including any of the following areas:

- Public health burden of pain.
- Ethics and health policy related to pain.
- Michigan pain and controlled substance laws.
- Pain definitions.
- Basic sciences related to pain including pharmacology.
- Clinical sciences related to pain.
- Specific pain conditions.
- Clinical physician communication related to pain.
- Management of pain, including evaluation and treatment and nonpharmacological and pharmacological management.
- Ensuring quality pain care and controlled substances prescribing.
- Michigan programs and resources relevant to pain.

Minnesota: Rules of the Minnesota Board of Medical Practice establish continuing education requirements for physicians licensed in Minnesota [Minnesota Rules, chapter 5605]. The rules do not require continuing education related to prescribing opioids or other controlled substances.

Summary of factual data and analytical methodologies: The proposed rules were developed by obtaining input and feedback from the Medical Examining Board.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-6795.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-26-7139; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing on December 21, 2022 at 8:00 a.m., to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Med 13.02 (1g), (1r), and (1v) are repealed.

SECTION 2. Med 13.02 (1x) (a) is amended to read:

Med 13.03 (1x) (a) Except as provided under par. (b), ~~for the renewal date occurring on November 1, 2023,~~ 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 prescribing opioids and other controlled substances ~~that is approved under s. Med 13.03 (3) at the time if the physician’s attendance, and whose subject matter meets the requirements of s. Med 13.03 (3) (b) 2s.~~

SECTION 3. Med 13.03 (3) is repealed.

SECTION 4 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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 10/05/22
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Med 13	
4. Subject Continuing Medical Education for Physicians	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected s. 20.165 (1) (hg)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The Medical Examining Board will update ch. Med 13 to extend the requirement that 2 of the 30 required continuing medical education (CME) hours per biennium shall be in a course or program related to opioid prescribing into the biennium ending November 2023, and to modify the requirement to include courses or programs concerning controlled substances generally. Additionally, the Board will re-evaluate and modify or remove the requirement that educational programs related to opioid prescribing or controlled substances be pre-approved by the Board.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The rule was posted for 14 days on the Department of Safety and Professional Services' website to solicit comments on the potential economic impact. No comments were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole. The Department estimates a total of \$470 one-time administrative costs, which may be absorbed in the agency budget.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefits of implementing this rule are that Physicians will continue maintain their knowledge and training on prescribing opioids and other controlled substances.	
16. Long Range Implications of Implementing the Rule The long range implications of implementing this rule are improved practice for Physicians in Wisconsin and better overall patient care.	
17. Compare With Approaches Being Used by Federal Government	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

None.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Rules of the Illinois Department of Financial and Professional Regulation establish continuing medical education requirements for physicians licensed in Illinois [68 Ill. Adm. Code 1285.110]. The rules do not require continuing education related to prescribing opioids or other controlled substances.

Iowa: Rules of the Iowa Board of Medicine establish continuing education requirements for physicians licensed in Iowa [653 IAC 11]. The rules require a licensee who has prescribed opioids to a patient during the previous license period to complete at least 2 hours of category 1 credit regarding the United States Centers for Disease Control and Prevention (CDC) guideline for prescribing opioids for chronic pain, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options, every 5 years [653 IAC 11.4(1) d. (1)].

Michigan: Rules of the Michigan Department of Licensing and Regulatory Affairs establish continuing medical education requirements for physicians licensed in Michigan [Mich Admin Code, R 338.2441 to R 338.2443]. The rules require a minimum of 3 hours of continuing education to be earned in pain and symptom management, including any of the following areas:

- Public health burden of pain.
- Ethics and health policy related to pain.
- Michigan pain and controlled substance laws.
- Pain definitions.
- Basic sciences related to pain including pharmacology.
- Clinical sciences related to pain.
- Specific pain conditions.
- Clinical physician communication related to pain.
- Management of pain, including evaluation and treatment and nonpharmacological and pharmacological management.
- Ensuring quality pain care and controlled substances prescribing.
- Michigan programs and resources relevant to pain.

Minnesota: Rules of the Minnesota Board of Medical Practice establish continuing education requirements for physicians licensed in Minnesota [Minnesota Rules, chapter 5605]. The rules do not require continuing education related to prescribing opioids or other controlled substances.

19. Contact Name Nilajah Hardin, Administrative Rules Coordinator	20. Contact Phone Number 608-267-7139
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **22-067**

AN ORDER to repeal Med 13.02 (1g), (1r), and (1v) and 13.03 (3); and to amend Med 13.02 (1x) (a), relating to continuing education.

Submitted by **MEDICAL EXAMINING BOARD**

10-05-2022 RECEIVED BY LEGISLATIVE COUNCIL.

10-26-2022 REPORT SENT TO AGENCY.

SG:KAM

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 22-067

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

In the enumeration of provisions treated, the repealed rules should be separated by “and” instead of a semicolon, reading “...repeal Med 13.02 (1g), (1r), and (1v) and 13.03 (3)”. [s. 1.01, Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

The proposed order cites s. 448.40 (1), Stats., as both the statute interpreted and one of the sources of statutory authority. Because the proposed rule specifically addresses continuing education training requirements, consider also citing s. 448.13, Stats., on biennial training requirements as a statute interpreted.


5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the plain language analysis, it appears the agency duplicates text prepared for the scope statement associated with the proposed rule, and in doing so uses the future tense to describe possible agency actions. Compared to the scope statement, the verb tenses and specificity of the plain language analysis should be updated to reflect the actions actually proposed in the rulemaking order, rather than those contemplated at the time the scope statement was approved.

b. In SECTION 2 of the proposed rule, amending s. Med 13.03 (1x) (a), delete the comma following the first section of deleted text.

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

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Nilajah Hardin, Administrative Rules Coordinator		2) Date when request submitted: 12/09/22 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: 12/21/22	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 – Discussion and Consideration <ol style="list-style-type: none"> 1. Med 10, Relating to Physical Examinations <ol style="list-style-type: none"> a. Review Public Hearing Comments and Respond to Clearinghouse Report 2. Med 26, Relating to Military Medical Personnel <ol style="list-style-type: none"> a. Review Rule Draft Language 3. Pending or Possible Rulemaking Projects 	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <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: Attachments: -Med 10 Rule Draft, Public Comments, Clearinghouse Report -Med 26 Draft Rule Text, 2021 WI Act 158 Rule Project Chart (Board Rule projects can be Viewed Here if Needed: https://dsps.wi.gov/Pages/RulesStatutes/PendingRules.aspx)			
11) Authorization			
 Signature of person making this request		12/09/22 Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: <ol style="list-style-type: none"> 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting. 			

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)
:

PROPOSED ORDER

An order of the Medical Examining Board to create Med 10.02 (2m), (4m), and 10.03 (2)(f)4, relating to performance of physical examinations.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 448.015 (4) (am) 1., Stats.

Statutory authority:

Section 15.08 (5) (b) and 448.40 (1), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides each examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 448.40 (1), Stats., provides that “[t]he board may promulgate rules to carry out the purposes of this subchapter, including rules requiring the completion of continuing education, professional development, and maintenance of certification or performance improvement or continuing medical education programs for renewal of a license to practice medicine and surgery.”

The board expressly does not intend to impose or attempt to impose requirements upon any person or entity that does not fall under the board’s jurisdiction through this project.

Related statute or rule:

Chapter Med 21 provides minimum standards for patient health care records. The proposed changes to chapter Med 10 are related in that they involve actions and decisions that a physician will need to properly document.

Plain language analysis:

The proposed rule expands unprofessional conduct to require that physicians either follow the policies established by their employers for the use of chaperones during physical examinations, or that physicians establish policies and follow them. Physicians will also be required to make their policy regarding the use of chaperones accessible to all patients.

“Chaperone” is defined to mean an individual whom a physician requests to be present during a clinical examination who can serve as a witness to the examination taking place. “Observer” is defined to mean an individual chosen by the patient to be present during an examination, and is presumed to include an adult family member, legal guardian, or legal custodian if the patient is twelve years of age or under. The distinction between the two is that a chaperone is arranged for or requested by the physician on the patient’s behalf and must be able to serve as a witness, whereas an observer is directly chosen by the patient.

Nothing under this rule is intended to impose a requirement upon any person or entity that the board does not have jurisdiction over.

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

None.

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation establish standards of conduct for physicians licensed in Illinois [68 Ill. Adm. Code 1285.110]. The rules do not require the use of chaperones during physical examinations.

Iowa:

Rules of the Iowa Board of Medicine provide the Board with authority to impose disciplinary sanctions for certain acts and offenses (653 IAC 23.1). The rules do not require the use of chaperones during physical examinations.

Michigan:

The Michigan Public Health Code establishes grounds for discipline of licensees and registrants (MCL 333.16221). The Code does not require the use of chaperones during physical examinations.

Minnesota:

The Minnesota Statutes provide the grounds for disciplinary action against a physician (2020 Minnesota Statutes, Section 147.091). These provisions do not require the use of chaperones during physical examinations.

Summary of factual data and analytical methodologies:

The proposed rules were developed by obtaining input and feedback from the Medical Examining Board.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.

Effect on small business:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.

Agency contact person:

Jameson R. Whitney, Attorney, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-266-8098; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. Med 10.02 (2m) and (4m) are created to read:

Med 10.02 (2m) “Chaperone” means an individual whom a physician requests to be present during a clinical examination that exposes the breasts, genitals, or rectal area, and who can serve as a witness to the examination taking place should there be any misunderstanding or concern for sexual misconduct.

(4m) “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) (fm) is created to read:

Med 10.03 (2) (fm) 1. If a physician who practices in a hospital or works for any other employer fails to comply with the rules established by their hospital or employer regarding chaperones or other observers in patient examinations, then the failure to follow such rules during an exam in which a violation of par. (f) is alleged may be considered by the board in determining whether the alleged misconduct occurred.

2. Physicians who are self-employed or in other practice settings that do not involve hospitals or employers shall establish written procedures for the use of chaperones or other observers in patient examinations and shall comply with these procedures once established.

3. A copy of any rules and procedures, or a summary thereof, regarding the physician’s use of chaperones or other observers shall be made available and accessible to all patients who are likely to receive a non-emergency examination of the breasts, genitals, or rectal area.

4. A physician shall not be found in violation of this section because of the failure of a third party to create a policy regarding chaperones, or to allow posting or notification of any policy regarding chaperones.

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)

Dated _____

Board Chairperson or Secretary

DRAFT



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **22-063**

AN ORDER to create Med 10.02 (2m) and (4m), and 10.03 (2) (f) 4., relating to performance of physical examinations.

Submitted by **MEDICAL EXAMINING BOARD**

09-23-2022 RECEIVED BY LEGISLATIVE COUNCIL.

10-17-2022 REPORT SENT TO AGENCY.

SG:KAM

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 22-063

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

In general, the agency should more fully explain its intent regarding the responsibility of hospitals and employers of physicians to create policies regarding chaperones or other observers in patient examinations. Does the agency intend to require hospitals and employers of physicians to create policies regarding chaperones or other observers? What outcome does the agency expect if a hospital or employer of a physician does not have a policy on chaperones or observers? Do any obligations under the proposed rule, such as the posting requirement in the last sentence of s. Med 10.03 (2) (f) 4., apply to a hospital or employer of a physician in addition to a self-employed physician? If so, the agency should more fully explain its authority to impose its requirements on an entity other than a physician.

2. Form, Style and Placement in Administrative Code

a. In SECTION 2 of the proposed rule, creating s. Med 10.03 (2) (f) 4., the proposed text is placed as a subdivision of par. (f). Each subunit of a section should relate to a particular subset of subject matter within the section’s larger subject matter. Paragraph (f) relates to engaging in sexual behavior with patients, and its existing subdivisions address details of that behavior. Because the proposed provision does not specifically relate to that topic, consider placing it in a separate paragraph instead of as a subdivision of par. (f). [s. 1.09 (2) (b), Manual.] If the agency keeps the insertion as a subdivision, then the insertion of a subdivision is designated by a number followed by a period. [s. 1.10 (1) (b) 5., Manual.]

b. In SECTION 2 of the proposed rule, creating s. Med 10.03 (2) (f) 4., the incorporation by reference of standards should be reviewed for compliance with s. 1.14 of the Manual. Prospective incorporation by reference should be avoided, as it raises questions of due process and improper delegation of authority. [s. 1.14 (5), Manual.] In particular, as presently drafted, questions may arise due to the manner in which the proposed rule appears to adopt prospective changes to chaperone and observer policies without additional agency oversight or future

rulemaking. Additionally, compliance with the Attorney General's role in incorporation by reference should be documented in the rule analysis.

4. Adequacy of References to Related Statutes, Rules and Forms

In the analysis of the proposed rule, the proposed rule states that ch. Med 21 is a related statute or rule. The agency should consider clarifying how patient health care records are related to the proposed rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In SECTION 1 of the proposed rule, creating s. Med 10.02 (2m), the definition of "chaperone" is unclear. Is the individual present required to have basic training, or is it only permissible that the individual have basic training? What is the minimum basic training required? Note, that in clarifying the above questions, and similar questions regarding s. Med 10.02 (4m), it may be more appropriate to do so in a new substantive provision, rather than within the definition itself. For example, the presumptions of qualifications for a chaperone or observer could be placed in the code as a separate substantive provision. [s. 1.07 (1) (d), Manual.]

b. In general, the agency should consider further dividing into subunits the text of proposed rules that address different requirements. [s. 1.09, Manual.] For example, the multiple requirements of SECTION 2 may be clarified through additional subdivision.

Chapter Med 26
MILITARY MEDICAL PERSONNEL

Med 26.01 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) (b) and 448.40 (1m), Stats.

Med 26.02 Definitions.

- (1) "Board" means the Medical Examining Board.
- (2) "Community-based residential facility" has the meaning given in s. 50.01 (1g), Stats.
- (3) "Department" means the Department of Safety and Professional Services.
- (4) "Inpatient health care facility" has the meaning given in s. 50.135 (1), Stats.
- (5) "Military medical personnel" has the meaning given in s. 440.077 (1) (d), Stats.
- (6) "Residential care apartment complex" has the meaning given in s. 50.01 (6d), Stats.
- (7) "Skilled health services" has the meaning given in s. 440.077 (1) (h), Stats.

Commented [HND1]: Add complete statutory definition instead of reference?

Med 26.03 Minimum Practice Standards. An applicant shall satisfy all of the following requirements in order to participate in the military medical personnel program specified under s. 440.077 (2) (a), Stats:

- (1) Pursuant to s. 440.077 (3) (a), Stats., notify the department of their timeline to acquire a license.
- (2) Complete the Memorandum of Understanding form outlined in s. Med 26.05.
- (3) Provide evidence of a general or honorable discharge from the military within the most recent 12 months.
- (4) Except as provided in s. 440.077 (1) (h) 2., Stats. practice skilled health services that reflect their individual training and experience under a supervisor as outlined in s. Med 26.04, which may include:
 - (a) Examining the fact, condition, or cause of human health or disease.
 - (b) Treating or advising on human health or disease by any means or instrumentality.
 - (c) Penetrating, piercing, or severing human tissues.
 - (d) Applying principles of medical science in the diagnosis or prevention of human disease.
- (5) Practice under supervision at any of the following locations:
 - (a) A community-based residential facility.
 - (b) An inpatient health care facility.
 - (c) A residential care apartment complex.
 - (d) An outpatient health care facility.

Commented [HND2]: 440.077 (1) (h) 2. - ""Skilled health services" does not include surgical procedures or issuing prescription orders."

Med 26.04 Supervision. (1) An individual participating in the military medical personnel program specified under s. 440.077 (2) (a), Stats. shall practice under the supervision of any of the following Wisconsin licensed healthcare practitioners:

- (a) Advanced practice nurse prescriber certified under s. 441.16 (2), Stats;
- (b) Physician licensed under s. 448.03 (1), Stats;
- (c) Physician assistant licensed under s. 448.974 (1), Stats;

- (d) Podiatrist licensed under s. 448.63 (1), Stats; or,
- (e) Registered professional nurse licensed under s. 441.06, Stats.

(2) The supervising healthcare practitioners under sub. (1) shall do all of the following while supervising a military medical personnel program participant:

- (a) Retain responsibility for the care of any patient treated by the participant.
- (b) Remain on-site and available to participant for consultation for as long as that participant is practicing skilled health services.
- (c) Regularly review and evaluate the practice of the participant to ensure proper patient care standards are being met.

Med 26.05 Memorandum of Understanding. The Memorandum of Understanding form for the military medical personnel program shall contain all of the following information:

- (1) A description of all relevant military or civilian healthcare training.
- (2) A detailed list of skilled health services that the individual has the training and experience to perform.
- (3) The signature of the program participant.
- (4) The signature of the supervising healthcare practitioner.

Med 26.06 Extension of Timeline to Obtain Licensure. An extension of the timeline required under s. 440.077 (3) (a), Stats., may be requested by a program participant and must be approved by the Board. A maximum of one extension request may be granted by the Board to a military medical personnel program participant.

**Medical Examining Board
Rule Projects (updated 12/09/22)**

Clearinghouse Rule Number	Scope #	Scope Expiration	Code Chapter Affected	Relating clause (description)	Current Stage	Next Step
22-063	012-21	08/08/2023	Med 10	Performance of Physical Examinations (Chaperones and Observers during Physical Examinations)	Board Review of Public Comments and Respond to Clearinghouse Report	Final Rule Draft and Legislative Report Submitted to Governor's Office for Review and Approval
20-053	094-20	01/20/2023	Med 13	Continuing Medical Education (Physician use of Electronic CE Tracking)	Legislative Review After 01/03/2023	Adoption
22-067	035-22	10/25/2024	Med 13	Continuing Medical Education (Controlled Substances Prescribing CE)	Public Hearing Scheduled for December 21, 2022 Meeting	Final Rule Draft and Legislative Report Submitted to Governor's Office for Review and Approval
Not Assigned Yet	Not Assigned Yet	Not Assigned Yet	Med 20	Respiratory Care Practitioner Examinations (RCP Jurisprudence Exam)	Project on hold pending results of spring 2022 test software update	N/A
Not Assigned Yet	044-22	11/23/2024	Med 26	Military Medical Personnel	Drafting	Board Approval of Emergency and Preliminary Rule Drafts



Wisconsin Medical Examining Board Opioid Prescribing Guideline Amended 12/2022

Guideline Scope and Purpose

To help providers make informed decisions about acute and chronic pain treatment -- pain lasting longer than three months or past the time of normal tissue healing. The guideline is not intended for patients who are in active cancer treatment, palliative care, sickle cell or end-of-life care. Although not specifically designed for pediatric pain, many of the principals upon which they are based could be applied there, as well.

Opioids pose a potential risk to all patients. The Guideline encourages providers to implement safe practices for responsible prescribing which includes prescribing the lowest effective dose for the shortest possible duration for post-operative care and acutely injured patients.

Guideline Core Principles

Identify and treat the cause of the pain, use non-opioid therapies

Use non-pharmacologic therapies (such as yoga, exercise, cognitive behavioral therapy and complementary/alternative medical therapies) and non-opioid pharmacologic therapies (such as acetaminophen and anti-inflammatories) for acute and chronic pain. Don't use opioids routinely for chronic pain. When opioids are used, combine them with non-pharmacologic or non-opioid pharmacologic therapy, as appropriate, to provide greater benefits.

Start low and go slow

When opioids are used, prescribe the lowest possible effective dosage and start with immediate release opioids instead of extended-release/long-acting opioids. Only provide the quantity needed for the expected duration of pain.

Close follow-up

Regularly monitor patients to make sure opioids are improving pain and function without causing harm. If benefits do not outweigh harms, optimize other therapies and work with patients to taper or discontinue opioids, if needed.

Guideline Focus Areas

The Guideline addresses patient-centered clinical practices including conducting thorough assessments, considering all possible treatments, treating the cause of the pain, closely monitoring risks, and safely discontinuing opioids. The three main focus areas in the Guideline include:

Determining when to initiate or continue opioids

- Selection of non-pharmacologic therapy, non-opioid pharmacologic therapy, opioid therapy
- Establishment of treatment goals
- Discussion of risks and benefits of therapy with patients

Opioid selection, dosage, duration, follow up and discontinuation

- Selection of immediate-release or extended-release and long-acting opioids
- Dosage considerations
- Duration of treatment
- Considerations for follow-up and discontinuation of opioid therapy

Assessing risk and addressing harms of opioid use

- Evaluation of risk factors for opioid-related harms and ways to mitigate/reduce patient risk - Review of prescription drug monitoring program (PDMP) data
- Use of urine drug testing
- Considerations for co-prescribing benzodiazepines
- Arrangement of treatment for opioid use disorder

Opioid Prescribing Guideline

1. In treating acute pain, non-opioids should be considered first. If non-opioids are not efficacious, opioid therapy may be considered if benefits are anticipated to outweigh the risks. Before prescribing opioid therapy for acute pain, realistic benefits and known risks of opioid therapy should be discussed. Consultation should be considered if diagnosis and treatment is outside the scope of the prescribing practitioner. If a practitioner is not familiar with safe opioid prescribing, they are not required to prescribe.
2. Nonopioid therapy is preferred for subacute and chronic pain (pain greater than 3 months). If non-opioids are not adequate and expected benefits for pain and function outweigh risks, opioids may be acceptable. Risks and benefits should be discussed. The goal is to establish treatment goals and functional improvement and how opioid therapy will be discontinued. Therapies such as physical therapy, behavioral health, yoga etc. should be considered. If pain is beyond the expected healing period of surgery or trauma or etiology of pain is unclear, consultation with a pain specialist (completed an ACGME fellowship) is recommended. A patient should have at least 30% improvement in pain scores, functional improvement, no signs of abuse or aberrant behavior and side effects screened for such as sedation or constipation.
3. Patients should not receive opioid prescriptions from multiple physicians. There should be a dedicated provider such as a primary care or pain specialist to provide all opioids used in treating any patient's chronic pain, with existing pain contracts being honored.
4. Physicians are encouraged to review the patient's history of controlled substance prescriptions using the Wisconsin Prescription Drug Monitoring Program (PDMP) data to determine whether the patient is receiving opioid dosages or dangerous combinations that put him or her at high risk for overdose. As of April 2017, Wisconsin state law requires prescribers to review the PDMP before prescribing any controlled substance for greater than a three-day supply.

5. Prescribing of opioids is strongly discouraged in patients taking benzodiazepines or other respiratory depressants (gabapentin, lyrica, muscle relaxants, sleep aids). Benzodiazepines triple the already high increases in respiratory depression and annual mortality rates from opioids. If they are used concurrently, clear clinical rationale must exist.
6. Patients presenting for chronic pain treatment should have a thorough evaluation, which may include the following:
 - a. Medical history and physical examination targeted to the pain condition.
 - b. Nature and intensity of the pain.
 - c. Current and past treatments, with response to each treatment.
 - d. Underlying or co-existing diseases or conditions, including those which could complicate treatment (i.e., renal disease, sleep apnea, chronic obstructive pulmonary disease (COPD), etc.).
 - e. Effect of pain on physical and psychological functioning.
 - f. Personal and family history of substance abuse.
 - g. History of psychiatric disorders associated with opioid abuse (bipolar, attention deficit disorders (ADD/ADHD), sociopathic, borderline, untreated/severe depression).
 - h. Medical indication(s) for use of opioids.
 - i. Use of an opioid risk tool
7. Components of ongoing assessment of risk include:
 - a. Review of the Prescription Drug Monitoring Program (PDMP) information.
 - b. Periodic urine drug testing (including chromatography) – at least yearly in low-risk cases, more frequently with evidence of increased risk.
 - c. Violations of the opioid agreement.
 - d. Periodic pill counts may also be considered for high-risk patients.
8. All patients on chronic opioid therapy should have informed consent consisting of:
 - a. Specifically detailing significant possible adverse effects of opioids, including (but not limited to) addiction, overdose, and death. It is also recommended practitioners discuss with patients the effect opioid use may have on the ability to safely operate machinery or a vehicle in any mode of transportation.
 - b. Treatment agreement, documenting the behaviors required of the patient by the prescribing practitioner to ensure that they are remaining safe from these adverse effects.
9. Opioids should be prescribed in the lowest effective dose. Literature shows diminished returns for doses above 50 morphine equivalents. This includes prescribing the lowest effective dose for the shortest possible duration for post-operative care and acutely injured patients. Given that there is no evidence base to support efficacy of doses over 90 MMEs, with dramatically increased risks, dosing above this level is discouraged, and appropriate documentation to support such dosing should be present on the chart. It is understood there is variation in response to opioid doses.

10. Prescribing of opioids is strongly discouraged for patients abusing illicit drugs. These patients are at extremely high risk for abuse, overdose, and death. If opioids are prescribed to such patients, a clear and compelling justification should be present.
11. During initial opioid titration, practitioners should re-evaluate patients every 1-4 weeks. During chronic therapy, patients should be seen at least every 3 months, more frequently if they demonstrate higher risk.
12. Practitioners should consider prescribing naloxone for home use in case of overdose for patients at higher risk, including:
 - a. History of overdose (a relative contraindication to chronic opioid therapy).
 - b. Opioid doses over 50 MMEs/day.
 - c. Clinical depression.
 - d. Evidence of increased risk by other measures (behaviors, family history, PDMP, UDS, risk questionnaires, etc.).

The recommended dose is 0.4 mg for intramuscular or intranasal use, with a second dose available if the first is ineffective or wears off before Emergency Medical Services (EMS) arrives. Family members can be prescribed naloxone for use with the patient.

13. All practitioners are expected to provide care for potential complications of the treatments they provide, including opioid use disorder. As a result, if a patient receiving opioids develops behaviors indicative of opioid use disorder, the practitioner, when possible, should assist the patient in obtaining addiction treatment, either by providing it directly (buprenorphine, naltrexone, etc. plus behavioral therapy) or referring them to an appropriate treatment center or provider willing to accept the patient. Discharging a patient from the provider's practice solely due to an opioid use disorder is not considered acceptable.
14. If a patient has had chronic pain and has not been evaluated by a pain specialist in the last 5 years, consider referral.