



**VIRTUAL/TELECONFERENCE
MEDICAL EXAMINING BOARD
Virtual, 4822 Madison Yards Way, Madison
Contact: Tom Ryan (608) 266-2112
August 16, 2023**

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 July 19, 2023 and August 8, 2023 (6-13)**
- C. Introductions, Announcements and Recognition**
 - 1) Introduction: Dr. Callisia Clarke (Succeeds: Dr. Lemuel Yerby)
 - 2) Introduction: Dr. Lubna Majeed-Haqqi (Succeeds: Dr. Michael Parish)
- D. Reminders: Conflicts of Interest, Scheduling Concerns**
- E. Administrative Matters – Discussion and Consideration**
 - 1) Department, Staff and Board Updates
 - a. Introduction of Division Administrator Sarah Barry
 - 2) Appointment of Liaisons and Alternates **(14-15)**
 - 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. Hilton, Stephanie – 7/1/2024
 - g. Lerma, Carmen – 7/1/2024
 - h. Schmeling, Gregory J. – 7/1/2025
 - i. Siebert, Derrick R. – 7/1/2025
 - j. Wasserman, Sheldon A. – 7/1/2023
 - k. Yu, Emily S. – 7/1/2024
 - 4) **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

- F. Legislative and Policy Matters – Discussion and Consideration**
 - 1) Graduate Physician Licensing Discussion
- G. 8:00 A.M. Public Hearing – CR 23-037 on Med 26, Relating to Military Medical Personnel (16)**
 - 1) Review and Respond to Public Hearing Comments and Clearinghouse Report (17-33)
- H. Administrative Rule Matters – Discussion and Consideration (34)**
 - 1) Adoption Orders
 - a. Med 10, relating to Performance of Physical Examinations (35-38)
 - b. Med 13, relating to Continuing Medical Education for Physicians (39-41)
 - 2) Pending or Possible Rulemaking Projects (42)
- I. Newsletter Matters – Discussion and Consideration
- J. Federation of State Medical Boards (FSMB) Matters – Discussion and Consideration
- K. Controlled Substances Board Report – Discussion and Consideration
- L. Interstate Medical Licensure Compact Commission (IMLCC) – Report from Wisconsin’s Commissioners – Discussion and Consideration
- M. Screening Panel Report
- N. Future Agenda Items
- O. 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) Public Health Emergencies
 - 11) Legislative and Policy Matters
 - 12) Administrative Rule Matters
 - 13) Liaison Reports
 - 14) Board Liaison Training and Appointment of Mentors
 - 15) Informational Items
 - 16) Division of Legal Services and Compliance (DLSC) Matters
 - 17) Presentations of Petitions for Summary Suspension
 - 18) Petitions for Designation of Hearing Examiner
 - 19) Presentation of Stipulations, Final Decisions and Orders
 - 20) Presentation of Proposed Final Decisions and Orders
 - 21) Presentation of Interim Orders
 - 22) Petitions for Re-Hearing
 - 23) Petitions for Assessments
 - 24) Petitions to Vacate Orders
 - 25) Requests for Disciplinary Proceeding Presentations

- 26) Motions
- 27) Petitions
- 28) Appearances from Requests Received or Renewed
- 29) Speaking Engagements, Travel, or Public Relation Requests, and Reports

P. 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.).

Q. Deliberation on DLSC Matters

- 1) Proposed Stipulations, Final Decisions and Orders**
 - a. 20 MED 302 – Anton I. Kidess, M.D. **(43-49)**
 - b. 21 MED 309 – Donna M. Luchetta, M.D. **(50-55)**
 - c. 21 MED 316 – David L. Gearhart, M.D. **(56-61)**
 - d. 22 MED 306 – Adegboyega H. Lawal, M.D. **(62-68)**
 - e. 22 MED 473 – Aaron B. Hoffnung, M.D. **(69-75)**
 - f. 22 MED 489 – Chinedu N. Nwabueze, M.D. **(76-82)**
 - g. 22 MED 533 – Ron Y. Mark, M.D. **(83-88)**
 - h. 23 MED 085 – David M. Nienhuis, M.D. **(89-93)**
 - i. 23 MED110 – David M. Martin, A.A.-C. **(94-102)**
 - j. 23 MED 254 – Scott W. Smith, M.D. **(103-107)**
- 2) Complaints**
 - a. 20 MED 302 – A.I.K. **(108-110)**
- 3) Administrative Warnings**
 - a. 23 MED 062 – J.G.D. **(111-112)**
 - b. 23 MED 065 – B.R.D. **(113-114)**
- 4) Case Closings**
 - a. 23 MED 059 – S.K. **(115-120)**
 - b. 23 MED 079 – D.K.P. **(121-127)**
 - c. 23 MED 174 – R.S.K. **(128-137)**
- 5) Monitoring (138-139)**
 - a. Stephen Mason, M.D. – Requesting Full Licensure **(140-158)**
 - b. Todd Nelson, M.D. – Requesting Modification of Monitoring Order **(159-185)**

R. Deliberation on Proposed Final Decision and Orders

- 1) Carol M. Brown – DHA Case Number SPS-21-0023, DLSC Case Number 18 MED 486 **(186-236)**

S. Credentialing Matters

- 1) Waiver of 24 Months of ACGME/AOA Accredited Post-Graduate Training**
 - a. Carlos Wambier, M.D. **(237-329)**
 - b. Prakash Chauhan, M.D. **(330-387)**

T. 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

U. Open Cases

V. Consulting with Legal Counsel

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

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

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

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

ADJOURNMENT

ORAL INTERVIEWS OF CANDIDATES FOR LICENSURE

VIRTUAL/TELECONFERENCE

10:00 A.M. OR IMMEDIATELY FOLLOWING THE FULL BOARD MEETING

CLOSED SESSION – Reviewing Applications and Conducting Oral Interview(s) of **one (1)** (at time of agenda publication) Candidate(s) for Licensure – **Dr. Goel** and **Dr. Schmeling**

NEXT MEETING: SEPTEMBER 20, 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
JULY 19, 2023**

PRESENT: Milton Bond, Jr. (*arrived at 8:10 a.m.*) (*excused at 8:55 a.m.*); Clarence Chou, M.D. (*arrived at 8:02 a.m.*); Kris Ferguson, M.D. (*arrived at 8:05 a.m.*); Diane Gerlach, D.O.; Sumeet Goel, D.O.; Stephanie Hilton; Gregory Schmeling, M.D.; Derrick Siebert, M.D.; Sheldon Wasserman, M.D.; Lemuel Yerby, M.D.; Emily Yu, M.D.

EXCUSED: Carmen Lerma

STAFF: Tom Ryan, Executive Director; Jameson Whitney, Legal Counsel; Nilajah Hardin, Administrative Rules Coordinator; Dialah Azam, Bureau Assistant; 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.

ADOPTION OF AGENDA

Amendment to the Agenda

- Under agenda item C. Introductions, Announcements and Recognition **ADD** Recognition: Lemuel Yerby, Physician Member (Resigns: 8/1/2023)
- **REMOVE** agenda item E.1(a) Introduction of Division Administrator Sarah Barry

MOTION: Kris Ferguson moved, seconded by Sumeet Goel, to adopt the Agenda as amended. Motion carried unanimously.

(Clarence Chou arrived at 8:02 a.m.)

APPROVAL OF MINUTES OF JUNE 21, 2023

MOTION: Diane Gerlach moved, seconded by Gregory Schmeling, to approve the Minutes of June 21, 2023 as published. Motion carried unanimously.

INTRODUCTIONS, ANNOUNCEMENTS AND RECOGNITION

Recognition: Lemuel Yerby, Physician Member (Resigns: 8/1/2023)

MOTION: Kris Ferguson moved, seconded by Gregory Schmeling, to recognize and thank Lemuel Yerby for his years of dedicated service to the Board and State of Wisconsin. Motion carried unanimously.

(Kris Ferguson arrived at 8:05 a.m.)

(Milton Bond arrived 8:10 a.m.)

CLOSED SESSION

MOTION: Clarence Chou moved, seconded by Kris Ferguson, 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: Milton Bond, Jr.-yes; Clarence Chou-yes; Kris Ferguson-yes; Diane Gerlach-yes; Sumeet Goel-yes; Stephanie Hilton-yes; Gregory Schmeling-yes; Derrick Siebert-yes; Sheldon Wasserman-yes; Lemuel Yerby-yes; and Emily Yu-yes. Motion carried unanimously.

The Board convened into Closed Session at 8:25 a.m.

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

Proposed Stipulations, Final Decisions and Orders

21 MED 317 – Farouk Y. Khan, M.D.

MOTION: Lemuel Yerby moved, seconded by Kris Ferguson, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Farouk Y. Khan, M.D., DLSC Case Number 21 MED 317. Motion carried unanimously.

22 MED 406 – Thomas M. Tamlyn, M.D.

MOTION: Sumeet Goel moved, seconded by Emily Yu, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Thomas M. Tamlyn, M.D., DLSC Case Number 22 MED 406. Motion carried unanimously.

22 MED 441 – Stephen R. Kreuser, M.D.

MOTION: Gregory Schmeling moved, seconded by Lemuel Yerby, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against Stephen R. Kreuser, M.D., DLSC Case Number 22 MED 441. Motion carried unanimously.

23 MED 104 – Keith A. Ryan, M.D.

MOTION: Sumeet Goel moved, seconded by Stephanie Hilton, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary

proceedings against Keith A. Ryan, M.D., DLSC Case Number 23 MED 104. Motion carried unanimously.

Complaints

22 MED 157 – S.H.M.

MOTION: Clarence Chou moved, seconded by Lemuel Yerby, to find probable cause in DLSC Case Number 22 MED 157, to believe that S.H.M. 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.

(Stephanie Hilton recused themselves and left the room for deliberation and voting in the matter concerning S.H.M., Respondent, DLSC Case Number 22 MED 157.)

Administrative Warnings

22 MED 507 – A.P.S.

MOTION: Sumeet Goel moved, seconded by Gregory Schmeling, to issue an Administrative Warning in the matter of A.P.S., DLSC Case Number 22 MED 507. Motion carried unanimously.

23 MED 034 – F.A.M.

MOTION: Emily Yu moved, seconded by Stephanie Hilton, to issue an Administrative Warning in the matter of F.A.M., DLSC Case Number 23 MED 034. Motion carried unanimously.

(Milton Bond Jr excused at 8:55 a.m.)

23 MED 109 – J.L.W.

MOTION: Sumeet Goel moved, seconded by Gregory Schmeling, to close the matter of J.L.W., DLSC Case Number 23 MED 109, for Prosecutorial Discretion (P2). Motion carried unanimously.

Case Closings

MOTION: Clarence Chou moved, seconded by Stephanie Hilton, to close the following DLSC Cases for the reasons outlined below:

1. 21 MED 448 – S.M. – Insufficient Evidence
2. 22 MED 183 – S.K. – Insufficient Evidence
3. 22 MED 212 – N.M.H. – Insufficient Evidence
4. 22 MED 454 – C.D.B. – No Violation
5. 22 MED 126 – S.E.R. – Insufficient Evidence
6. 22 MED 263 – D.W.Q. – No Violation
7. 23 MED 138 & 22 MED 239 – J.L.S. – Insufficient Evidence
8. 23 MED 146 – Y.M.P. – No Violation

Motion carried unanimously.

23 MED 064 – A.H.C.A.

MOTION: Sumeet Goel moved, seconded by Gregory Schmeling, to close DLSC Case Number 23 MED 064, against A.H.C.A., for No Violation. Motion carried unanimously.

(Sheldon Wasserman recused themselves and left the room for deliberation and voting in the matter concerning A.H.C.A., DLSC Case Number 23 MED 064.)

23 MED 095 – G.P.

MOTION: Gregory Schmeling moved, seconded by Kris Ferguson, to close DLSC Case Number 23 MED 095, against G.P., for No Violation. Motion carried unanimously.

(Emily Yu recused themselves and left the room for deliberation and voting in the matter concerning G.P., DLSC Case Number 23 MED 095.)

Monitoring

Michael Perez Rodriguez – Requesting Full Licensure

MOTION: Sumeet Goel moved, seconded by Gregory Schmeling, to grant the request of Michael Perez Rodriguez for Requesting Full Licensure. Motion carried unanimously.

DELIBERATION ON MATTERS RELATING TO ORDERS FIXING COSTS

Siamak B. Arassi, M.D. – DHA Case Number SPS-22-0031, DLSC Case Numbers 20 MED 375 & 21 MED 284

MOTION: Gregory Schmeling moved, seconded by Clarence Chou, to adopt the Order Fixing Costs in the matter of disciplinary proceedings against Siamak B. Arassi, M.D., Respondent – DHA Case Number SPS-22-0031/DLSC Case Numbers 20 MED 375 & 21 MED 284. Motion carried unanimously.

(Kris Ferguson recused themselves and left the room for deliberation and voting in the matter concerning Siamak B. Arassi, M.D., Respondent – DHA Case Number SPS-22-0031/DLSC Case Numbers 20 MED 375 & 21 MED 284.)

CREENTIALING MATTERS

Application Reviews

Thekla Oechtering – Visiting Physician, Medicine and Surgery Applicant

MOTION: Gregory Schmeling moved, seconded by Clarence Chou, to approve the Medicine and Surgery application of Thekla Oechtering. Motion carried unanimously.

Nikolaos Panagiotopoulos – Visiting Physician, Medicine and Surgery Applicant

MOTION: Sumeet Goel moved, seconded by Lemuel Yerby, to approve the Medicine and Surgery Applicant application of Nikolaos Panagiotopoulos. Motion carried unanimously.

Stephen Polanski – Medicine and Surgery Applicant

MOTION: Sumeet Goel moved, seconded by Lemuel Yerby, to issue an intent to deny the Medicine and Surgery Applicant application of Stephen Polanski, and offer them a limited license with the following conditions: quarterly work reports for one year. **Reason for Denial:** Med 10.03(2)(a) and (3)(c). Motion carried unanimously.

Waiver of 24 Months of ACGME/AOA Accredited Post-Graduate Training

Ulas Cikla, M.D.

MOTION: Sumeet Goel moved, seconded by Gregory Schmeling, to approve the waiver of 24 Months of ACGME/AOA Accredited Post-Graduate Training application of Ulas Cikla, M.D. Motion carried unanimously.

RECONVENE TO OPEN SESSION

MOTION: Sumeet Goel moved, seconded by Kris Ferguson, to reconvene to Open Session. Motion carried unanimously.

The Board reconvened to Open Session at 9:48 a.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Kris Ferguson moved, seconded by Lemuel Yerby, 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: Gregory Schmeling moved, seconded by Sumeet Goel, to delegate ratification of examination results to DSPS staff and to ratify all licenses and certificates as issued. Motion carried unanimously.

ADJOURNMENT

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

The meeting adjourned at 9:50 a.m.

DRAFT

**VIRTUAL/TELECONFERENCE
MEDICAL EXAMINING BOARD
MEETING MINUTES
AUGUST 8, 2023**

PRESENT: Clarence Chou, M.D.; Sumeet Goel, D.O.; Stephanie Hilton; Carmen Lerma; Derrick Siebert, M.D.; Sheldon Wasserman, M.D. Emily Yu, M.D.

EXCUSED: Milton Bond, Jr.; Kris Ferguson, M.D.; Diane Gerlach, D.O. Gregory Schmeling, M.D.

STAFF: Tom Ryan, Executive Director; Jameson Whitney, Legal Counsel; Dialah Azam, Bureau Assistant; and other Department staff

CALL TO ORDER

Sheldon Wasserman, Chairperson, called the meeting to order at 8:09 a.m. A quorum was confirmed with seven (7) members present.

ADOPTION OF AGENDA

MOTION: Clarence Chou moved, seconded by Carmen Lerma, to adopt the Agenda as published. Motion carried unanimously.

CLOSED SESSION

MOTION: Clarence Chou moved, seconded by Sumeet Goel, 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: Clarence Chou-yes; Sumeet Goel-yes; Stephanie Hilton-yes; Carmen Lerma-yes; Derrick Siebert-yes; Sheldon Wasserman-yes; and Emily Yu-yes. Motion carried unanimously.

The Board convened into Closed Session at 8:11 a.m.

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

Proposed Stipulations, Final Decisions and Orders

*16 MED 167, 17 MED 275, 18 MED 316, 19 MED 053, 22 MED 268,
23 MED 044, & 23 MED 047 – David I. Stein, M.D.*

MOTION: Clarence Chou moved, seconded by Sumeet Goel, to adopt the Findings of Fact, Conclusions of Law and Order in the matter of disciplinary proceedings against David I. Stein, M.D., DLSC Case Numbers 16 MED

167, 17 MED 275, 18 MED 316, 19 MED 053, 22 MED 268, 23 MED 044, & 23 MED 047. Motion carried unanimously.

RECONVENE TO OPEN SESSION

MOTION: Clarence Chou moved, seconded by Emily Yu, to reconvene to Open Session. Motion carried unanimously.

The Board reconvened to Open Session at 8:13 a.m.

VOTE ON ITEMS CONSIDERED OR DELIBERATED UPON IN CLOSED SESSION

MOTION: Sumeet Goel moved, seconded by Carmen Lerma, 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.)

ADJOURNMENT

MOTION: Emily Yu moved, seconded by Carmen Lerma, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 8:13 a.m.

**MEDICAL EXAMINING BOARD
2022 ELECTION AND APPOINTMENT RESULTS**

Election of Officers

ELECTION RESULTS	
Chairperson	Sheldon Wasserman
Vice Chairperson	Clarence Chou
Secretary	Sumeet Goel

LIAISON APPOINTMENTS	
Credentialing Liaison(s)	Michael Parish, Lemuel Yerby, 7/19/23 Emily Yu, Diane Gerlach, Kris Ferguson, Gregory Schmeling, Derrick Siebert <i>Alternate:</i> Clarence Chou
Education and Examinations Liaison(s)	Continuing Education: Diane Gerlach <i>Alternate:</i> Clarence Chou Examinations: Gregory Schmeling <i>Alternate:</i> Clarence Chou
Monitoring Liaison(s)	Kris Ferguson <i>Alternate:</i> Clarence Chou
Professional Assistance Procedure (PAP) Liaison(s)	Kris Ferguson <i>Alternate:</i> Clarence Chou
Legislative Liaison(s)	Sheldon Wasserman <i>Alternate:</i> Sumeet Goel
Travel Authorization Liaison(s)	Sumeet Goel <i>Alternate:</i> Diane Gerlach
Newsletter Liaison(s)	Sheldon Wasserman <i>Alternate:</i> Sumeet Goel
Website Liaison(s)	Sumeet Goel <i>Alternate:</i> Milton Bond Jr

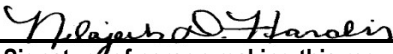
**MEDICAL EXAMINING BOARD
2022 ELECTION AND APPOINTMENT RESULTS**

Opioid Abuse Report Liaison(s) per 440.035(2m)(c)	Kris Ferguson <i>Alternate: Derrick Siebert</i>
Prescription Drug Monitoring Program Liaison(s)	Kris Ferguson <i>Alternate: Michael Parish 7/19/23</i>
Appointed to Controlled Substances Board as per Wis. Stats. §15.405(5g) (MED)	Lemuel Yerby Gregory Schmeling 7/19/23 <i>Alternate: Kris Ferguson, Sheldon Wasserman, Michael Parish 7/19/23</i>

OTHER APPOINTMENTS	
Council on Anesthesiologist Assistants	Kris Ferguson
Interstate Medical Licensure Compact Commission (IMLCC) Representatives	Sheldon Wasserman, Clarence Chou

**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: 8/4/23 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: 08/16/23	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 – CR 23-037 on Med 26, Relating to Military Medical Personnel 1. Review and Respond to Public Hearing Comments and 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 8/4/23	
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 **create** Med 26, relating to Military Medical Personnel.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 440.077, Stats.

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

Explanation of agency authority:

Section 15.08 (5) (b), Stats. states that “The Board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

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: None

Plain language analysis: The objective of the proposed rules is to implement the statutory changes from 2021 Wisconsin Act 158.

Summary of, and comparison with, existing or proposed federal regulation: The federal regulations that govern the U.S. armed forces are included under Title 32 of Us. Code of Federal Regulations.

Comparison with rules in adjacent states:

Illinois: The Illinois Department of Financial and Professional Regulation is responsible for the licensure and regulation of the practice of medicine in Illinois, with input from the Illinois State Medical Board. The Illinois Department is also responsible for the promulgation of rules to implement certain sections of the Illinois Medical Practice Act of 1987. This Act contains requirements for applications, licensure, and discipline for physicians [225 Illinois Compiled Statutes ch. 60]. The rules in the Illinois Administrative Code include requirements for education programs, visiting physician permits, and disciplinary proceedings, among others. [Illinois Administrative Code Title 68, ch. 7, s. 1285]. Neither the Illinois statutes nor the administrative rules for medical practice include requirements for military medical personnel. The Illinois Service Member Employment and Reemployment Rights Acts includes general provisions for employment for all military personnel, but none are specific to medical or healthcare practice [330 Illinois Compiled Statutes ch. 61].

Iowa: The Iowa Board of Medicine is responsible for the licensure and regulation of medicine and surgery in Iowa. Chapter 148 of the Iowa Code includes statutory requirements for licensure, composition and powers of the Iowa Board, and discipline for physicians [Iowa Code ch. 148]. The Iowa Administrative Code includes rules relating to medical practice. These requirements also include rules on military service and veteran reciprocity. Military service members can apply to have their service and training counted for credit toward licensure as a medical physician or surgeon, osteopathic physician or surgeon, or licensed acupuncturist. Veterans can apply for provisional licensure to service members who are licensed in another jurisdiction with a credential that is not substantially equivalent to an Iowa license. This provisional license allows for that Veteran to obtain the additional experience or education needed for a regular Iowa license. Iowa also has rules for reciprocal licensure for veterans and their spouses that are licensed in other jurisdictions and that license is substantially equivalent to an Iowa license [653 Iowa Administrative Code ch. 18]. The Iowa statutes and rules for medicine and surgery do not include requirements specifically for military medical personnel supervision and practice.

Michigan: The Michigan Board of Medicine is responsible for the licensure and regulation of medical practice in Michigan. Act 368 Article 15 Part 170 of the Michigan Compiled Laws includes the regulations for medicine in Michigan, among several other occupations. Some of the requirements in this part include those for licensure, informed consent, and duties of the Michigan Board. This part of the Michigan rules also includes requirements for physician assistants and genetic counselors in addition to physicians. [Michigan Compiled Laws ss. 333.17001-333.17097]. The Michigan rules for medicine do not include requirements specifically for military medical personnel supervision and practice.

Minnesota: The Minnesota Board of Medical Practice is responsible for the licensure and regulation of medicine in Minnesota. Part 6800 of the Minnesota Administrative Code includes requirements for licensure, continuing education, and hearings before the Minnesota Board. [Minnesota Administrative Rules part 5600]. Chapter 147 of the Minnesota Statutes, or the Minnesota Medical Practice Act, also includes requirements

for licensure, practice, and discipline for physicians [Minnesota Statutes ch. 147].

Chapter 197 of the Minnesota Statutes includes requirements for expedited licensing processing and temporary licensure for former and current military personnel. The expedited licensing process is for those service members who are otherwise qualified to obtain licensure in an efficient manner. The temporary license process allows certain qualified service members who are licensed in another state to practice while waiting for a regular license to be granted [Minnesota Statutes ch. 197]. The Minnesota statutes and rules for medicine do not include requirements specifically for military medical personnel supervision and practice.

Summary of factual data and analytical methodologies:

The Board reviewed 2021 Wisconsin Act 158 and added to the Wisconsin Administrative Code accordingly. While promulgating these rules, the Board referenced material submitted by the Virginia Military Medic and Corpsman Program, Heroes for Healthcare, and the Wisconsin Hospital Association, among other sources.

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

The rule was posted for 14 days on the Department of Safety and Professional Services website to solicit economic impact comments, including how the proposed rules may affect businesses, local municipalities, and private citizens. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These 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, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-267-7139; 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, P.O. Box 8366, Madison, Wisconsin 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing, held on August 16, 2023, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapter Med 26 is created to read:

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) “Adequate supervision” means the licensed supervising practitioner is competent and authorized under his or her applicable license or certification to perform the delegated clinical act, and must have reasonable evidence that the supervised individual is minimally competent to perform the act under the circumstances.

(2) “Administering facility” means an inpatient health care facility defined in s. 50.135(1), Stats., an outpatient health care location, a community-based residential facility defined in s. 50.01(1g), Stats., or a residential care apartment complex defined in s. 50.01(6d), Stats., that is a party to the memorandum of understanding specified in s. Med 26.03(1) and maintains a written policy governing registered military medical personnel specified in s. Med 26.03 (1) (g).

(3) “Advanced practice nurse prescriber” means a certified advanced practice nurse prescriber authorized to issue prescription orders under ch. 441, Stats.

(4) “Basic patient care” means care that can be performed following a defined procedure with minimal modification in which the responses of the patient to the care are predictable.

(5) “Basic patient situation” as determined by a licensed supervising practitioner means the following 3 conditions prevail at the same time in a given situation:

- (a) The patient's clinical condition is predictable;
- (b) Medical or nursing orders are not changing frequently and do not contain complex modifications; and,
- (c) The patient's clinical condition requires only basic patient care.

(6) “Complex patient situation” as determined by a Licensed supervising practitioner means any one or more of the following conditions exist in a given situation:

- (a) The patient's clinical condition is not predictable;
- (b) Medical or nursing orders are likely to involve frequent changes or complex modifications; or,

- (c) The patient's clinical condition indicates care that is likely to require modification of procedures in which the responses of the patient to the care are not predictable.
- (7) “Licensed supervising practitioner” means a physician licensed under ch. 448, Stats., a physician assistant licensed under ch. 448, Stats., a podiatrist licensed under ch. 448, Stats., a registered nurse licensed under ch. 441, Stats., and a certified advanced practice nurse prescriber defined in sub. (3).
- (8) “Military medical personnel” means a person who served as an army medic, a navy or coast guard corpsman, or an air force aerospace medical technician in the U.S. armed forces.
- (9) “Military medical personnel program participant” means military medical personnel who meet all of the following requirements:
 - (a) The person has signed a memorandum of understanding specified in s. Med 26.04 (1) and has submitted the memorandum of understanding to their employer as specified in s. Med 26.04 (2).
 - (b) The person has signed a reasonable timeline consistent with s. 440.077 (3) (c), Stats. that describes the actions the military medical personnel intends to take to acquire a license or certification under ss. 441.06, 441.10, 448.04, 448.61, or 448.974, Stats., including the date by which the military medical personnel agrees to acquire the license, and has submitted the timeline to the medical examining board as specified in s. Med 26.04 (3).
 - (c) The person was discharged or released from the service in par. (a) under honorable or general conditions no later than 12 months prior to the date the person signed the memorandum of understanding specified in s. Med 26.04 (1).

Med 26.03 Delegated authority. (1) Pursuant to the authority specified in s. 440.077 (2), Stats. and notwithstanding any rule or statute to the contrary, a licensed supervising practitioner may delegate his or her licensed or certified professional practice authority to perform a delegated clinical act to a person who is a military medical personnel program participant if all of the following are true:

- (a) The licensed supervising practitioner is competent and authorized under his or her applicable license or certification to perform the delegated clinical act.
- (b) The licensed supervising practitioner has reasonable evidence that the supervised military medical personnel program participant is minimally competent to perform the delegated clinical act under the circumstances based on the individual’s level of training and experience. Such reasonable evidence may include the memorandum of understanding signed by the military medical personnel program participant and the administering facility specified in s. Med 26.04.
- (c) The delegated clinical act is not a surgical procedure or the issuance of a prescription order.
- (d) The delegated clinical act is performed in an administering facility.

(2) The licensed supervising practitioner may rely on the representations made regarding the training and experience of the registered military medical personnel that are specified in the memorandum of understanding as reasonable evidence under subd. (1) (b) of the individual's clinical training, experience and competency to perform the delegated clinical act.

(3) The licensed supervising practitioner who delegates a clinical act for a patient to a registered military medical personnel pursuant to this section retains responsibility for the care of the patient.

(4) Subject to the limitation in s. 440.077 (2) (b), Stats. and except as provided in sub. (5), the scope in which a registered military medical personnel may practice is limited to the performance of acts in basic patient situations under the general supervision of a licensed supervising practitioner, which includes the following:

- (a) Accept only patient care assignments which the military medical personnel program participant is competent to perform.
- (b) Provide basic patient care.
- (c) Record patient care given and report changes in the condition of a patient to the appropriate person.
- (d) Consult with a provider in cases where the military medical personnel program participant knows or should know a delegated clinical act may harm a patient.
- (e) Perform the following other acts when applicable:
 - 1. Assist with the collection of data.
 - 2. Assist with the development and revision of a patient care plan.
 - 3. Reinforce the teaching provided by a licensed provider and provide basic health care instruction.
 - 4. Participate with other health team members in meeting basic patient needs.

(5) In the performance of acts in complex patient situations the military medical personnel program participant shall do all of the following:

- (a) Meet standards under sub. (4) under the general supervision of a licensed supervising practitioner.
- (b) Perform delegated clinical acts beyond basic patient care under the direct supervision of a licensed supervising provider. A military medical personnel program participant shall, upon request of the medical examining board, provide documentation of his or her education, training, or experience which prepares the military medical personnel program participant to competently perform these assignments.

Med 26.04 Documentation of training and experience. (1) A military medical personnel who practices pursuant to this chapter Med 26 shall sign a memorandum of understanding form published by the medical examining board that includes all of the following:

- (a) The name of the administering facility at which the military medical personnel will be providing delegated clinical care pursuant this chapter Med 26.

- (b) An identification of the military medical personnel as either an army medic, a navy corpsman, a coastguard corpsman, or an air force aerospace medical technician, and the individual's dates of service in such role.
- (c) The date of the military medical personnel's date of honorable or regular discharge from military service. Such date must be no earlier than 12 months prior to the date the memorandum of understanding is signed by the military medical personnel and the administering facility.
- (d) A description of the medical training and experience the individual received as an army medic, a navy corpsman, a coastguard corpsman, or an air force aerospace medical technician.
- (e) A reasonable timeline consistent with s. 440.077 (3) (c), Stats. that describes the actions the military medical personnel intends to take to acquire a license under ss. 441.06, 441.10, 448.04, 448.61, or 448.974, Stats., including the date by which the military medical personnel agrees to acquire the license. Except as provided in s. Med 26.05, the memorandum of understanding shall terminate one day after the date specified above or the date the military medical personnel acquires the license, whichever is earlier.
- (f) An attestation by the military medical personnel that he or she will not accept a delegation of practice authority under chapter Med 26 to perform a clinical act if his or her training and experience as a military medical personnel did not include that clinical act.
- (g) An attestation by the administering facility that it has a written policy governing clinical practice by registered military medical personnel, and that policy is shared with the military medical personnel subject to the memorandum of understanding and those licensed supervising practitioners authorized to delegate clinical acts to the individual.
- (h) An attestation by the administering facility that the administering facility to the best of the administering facility's knowledge and with a reasonable degree of certainty, all of the information in the memorandum of understanding is true.
- (i) The memorandum of understanding is signed and dated by the military medical personnel and an authorized representative of the administering facility.

(2) The military medical personnel shall submit a completed memorandum of understanding that meets all of the requirements in sub. (1) to the military medical personnel's employer.

(3) The military medical personnel shall submit the completed timeline under sub. (1) (e) to the department in the manner specified by the medical examining board on its published timeline form.

Med 26.05 Extension of Memorandum of Understanding Expiration Date. The medical examining board may extend the termination date of a signed memorandum of understanding under s. Med 26.04 if it appears that, because of unforeseen circumstances, the applicant requires more time to receive a license under ss. 441.06, 441.10, 448.04, 448.61, or 448.974, Stats.

Med 26.06 Complaints, investigations, suspension, and termination of authorization.

The medical examining board may receive and investigate complaints against a military medical personnel program participant performing delegated clinical acts pursuant to this chapter Med 26. The medical examining board may suspend or terminate a military medical personnel program participant's authority to perform delegated clinical acts pursuant to this chapter Med 26.

SECTION 2. 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

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date July 12, 2023</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Med 26 - Permanent Rule</p>	
<p>4. Subject Military Medical Personnel</p>	
<p>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</p>	<p>6. Chapter 20, Stats. Appropriations Affected s. 20.165 (1) (hg)</p>
<p>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 checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>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)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>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</p>	
<p>11. Policy Problem Addressed by the Rule These rules implement the statute changes from 2021 Wisconsin Act 158.</p>	
<p>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 will be posted on the Department's website for 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.</p>	
<p>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) DSPA estimates a total of \$12,600 in one-time costs and \$10,900 in annual costs for staffing and an indeterminate one-time IT impact to implement the rule. The estimated one-time staffing need for .2 limited term employee (LTE) is for staff to undertake such tasks as sites and forms updates and training on new requirements. The estimated annual staffing need for .1 full time employee (FTE) is to accommodate additional applications and legal processing due to the implementation of the rule. The one-time and annual estimated costs cannot be absorbed in the currently appropriated agency budget.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefits of implementing this rule are that the Medical Examining Board's section of the Administrative Code will be aligned with Wisconsin State Statutes.</p>	
<p>16. Long Range Implications of Implementing the Rule The long range implications of implementing this rule are clear minimum standards for practice as military medical personnel program participants in Wisconsin.</p>	
<p>17. Compare With Approaches Being Used by Federal Government</p>	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The federal regulations that govern the U.S. armed forces are included under Title 32 of Us. Code of Federal Regulations.

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

Comparison with rules in adjacent states:

Illinois: The Illinois Department of Financial and Professional Regulation is responsible for the licensure and regulation of the practice of medicine in Illinois, with input from the Illinois State Medical Board. The Illinois Department is also responsible for the promulgation of rules to implement certain sections of the Illinois Medical Practice Act of 1987. This Act contains requirements for applications, licensure, and discipline for physicians [225 Illinois Compiled Statutes ch. 60]. The rules in the Illinois Administrative Code include requirements for education programs, visiting physician permits, and disciplinary proceedings, among others. [Illinois Administrative Code Title 68, ch. 7, s. 1285]. Neither the Illinois statutes nor the administrative rules for medical practice include requirements for military medical personnel. The Illinois Service Member Employment and Reemployment Rights Acts includes general provisions for employment for all military personnel, but none are specific to medical or healthcare practice [330 Illinois Compiled Statutes ch. 61].

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19. Contact Name

20. Contact Phone Number

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

Nilajah Hardin, Administrative Rules Coordinator

(608) 267-7139

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 **23-037**

AN ORDER to create Med 26, relating to Military Medical Personnel.

Submitted by **MEDICAL EXAMINING BOARD**

07-12-2023 RECEIVED BY LEGISLATIVE COUNCIL.

08-08-2023 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

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CLEARINGHOUSE RULE 23-037

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 the statutory authority and explanation of statutory authority sections, include s. 448.40 (1m), Stats., which states, “the board may promulgate rules to establish minimum standards for military medical personnel...”. Also, between the Medical Examining Board and the Department of Safety and Professional Services (DSPS), consider which agency’s administrative code is best-suited to promulgate rules outlining the program, as the Medical Examining Board authority under s. 448.40 (1m), Stats., refers to promulgation of rules by the Board to establish minimum standards for military medical personnel, while the DSPS authority under s. 440.077 (5), Stats., is more broadly related to administration of the program.

2. Form, Style and Placement in Administrative Code

a. DSPS also proposed an administrative rule, Clearinghouse Rule 23-038, to address the Military Medical Personnel Program, created by 2021 Wisconsin Act 158. Consider coordinating with DSPS to use consistent language in both proposed rules.

b. In the plain language analysis of the proposed rule, could the agency provide more detail on the content of the rule and the role of rulemaking, relative to the statutory text, in administration and oversight of the Military Medical Personnel Program?

c. Throughout the proposed rule, in cross-references to statutes, consider using the specific cross-references to subsections instead of general cross-references to chapters, when applicable. For example, in proposed s. Med 26.02 (3), consider referencing s. 441.16 (2), Stats., instead of ch. 441, Stats.

d. Throughout the proposed rule, internal cross-references should follow the style prescribed by s. 1.15 (2) (c) of the Manual.

e. In proposed s. Med 26.02, the extent of the applicability of the definitions should be clearly stated. In the proposed rule, it appears definitions are intended to apply to the newly created ch. Med 26, so the phrase “In this chapter:” could precede the existing definitions. In the case of

multiple definitions, the applicability phrase should appear in introductory material that ends with a colon. [s. 1.07 (2) (b), Manual.]

f. In proposed s. Med 26.02 (5) and (6), avoid use of semicolons and “and,” at the penultimate rule subdivision. Instead, review the drafting style described in s. 1.11 of the Manual.

g. In proposed s. Med 26.02 (9), remove and relocate the substantive requirements for a military medical personnel program participant. Substantive provisions should not be incorporated as part of a definition. A reader should look to a definition section to understand the meanings of particular terms, and not to understand the procedures, requirements, or prohibitions that apply to the agency or persons or entities affected by the rule. [s. 1.07 (1) (d), Manual.] Additionally, in this provision, and proposed s. Med 26.04 (1) (e), the existing text refers to “a reasonable timeline consistent with s. 440.077 (3) (c), Stats.”. Use of this phrase merely repeats the existing statutory text without adding any clarity as to what timeline the agency considers to be reasonable. Consider providing using the rule text to provide additional detail as to what constitutes a reasonable timeline.

h. As used throughout proposed ch. Med 26, can the agency elaborate on its use of terms “delegate”, “clinical act”, “basic patient situation”, and “complex patient situation”? In particular, 2021 Wisconsin Act 158 uses the terms “supervise” and “skilled health services” and it is unclear why the agency has adopted a delegation model versus a supervisory one, and why it uses the terms “patient situation” and “clinical act” rather than “skilled health services”. If retained, note that the substantive definitions of “basic” and “complex” patient situations are very subjective and could be revised for clarity. Additionally, is the performance of acts in complex patient situations, as considered in proposed s. Med 26.03 (5), inconsistent with proposed s. Med 26.03 (4) (intro.), which limits practice to performance of acts in basic patient situations?

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

The agency should indicate, in a note, where the form contemplated by proposed s. Med 26.04 (1) may be accessed.

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

a. In proposed s. Med 26.03, avoid use of the construction, “notwithstanding any rule or statute to the contrary”, and instead identify specific provisions that would otherwise apply.

b. In proposed s. Med 26.03 (1), replace the phrase “his or her” with the phrase “the licensed supervising practitioner’s”. When drafting new rules and revising existing rules, eliminate all terminology that is not sex neutral. Avoid the repetitious use of the phrases “he or she” and “his or her”. In most cases, a pronoun can be replaced with the noun to which it refers. [s. 1.05 (2), Manual.]

c. In proposed s. Med 26.03 (1) (b), what is intended by the phrase, “Such reasonable evidence may include...”, beyond the referenced memorandum of understanding? Additionally, how does the text of s. Med 26.03 (2) differ from that of sub. (1) (b)?

d. In proposed s. Med 26.03 (5) (a), what does it mean to “meet the standards under sub. (4)”? Consider revising the provision to clarify.

e. In proposed s. Med 26.04 (1), consider including the military medical personnel’s scope of practice. The statute states that the memorandum of understanding must “detail the military

medical personnel's scope of practice". It may cause confusion to omit this requirement in the administrative rule that states what the memorandum of understanding must include. [s. 440.077 (2) (b), Stats.]


f. Under proposed s. Med 26.06, does the agency have any authority over a supervisor who violates the requirements of the chapter?

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

Consider revising the rule summary's section regarding the summary of, and comparison with, existing or proposed federal regulations to describe any relevant federal regulation in comparison to the proposed rule. If the cited federal regulation does not have any relevant comparison to the military medical personnel program, that relationship to the federal rules can be described and explained.

**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: 8/4/23 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: 08/16/23	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 1. Adoption Orders a. Med 10, relating to Performance of Physical Examinations b. Med 13, relating to Continuing Medical Education for Physicians 2. Pending or Possible Rulemaking Projects a. Rule Projects Chart	
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: Adoption Order – Med 10, Med 13 Rule Project Chart (Board Rule projects can be Viewed Here if Needed: https://dsps.wi.gov/Pages/RulesStatutes/PendingRules.aspx)			
11) Authorization			
		8/4/23	
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	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 22-063)

ORDER

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

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 448.015 (4) (am) 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.”

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.

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 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 report:

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.

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:

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 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 _____

Agency _____

Chairperson
Medical Examining Board

DRAFT

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	MEDICAL EXAMINING BOARD
MEDICAL EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 22-067)

ORDER

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

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss.448.13 and 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 includes the completion of continuing medical education.

Plain language analysis:

The objective of this rule was 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. This requirement was also modified to include courses or programs concerning controlled substances in general, not just opioid substances. Additionally, the Board removed the requirement that educational programs related to opioid prescribing or controlled substances be pre-approved by repealing section Med 13.03 (3).

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 report:

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 608-267-7139; email at DSPSAdminRules@wisconsin.gov.

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 13.02 (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)

Dated _____

Agency _____

Chairperson
Medical Examining Board

**Medical Examining Board
Rule Projects (updated 08/04/23)**

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)	Adoption Order Presented at 8/16/23 Meeting	Submission for Publication; Rule Effective Date Anticipated for 10/1/23
22-067	035-22	10/25/2024	Med 13	Continuing Medical Education for Physicians (Controlled Substances Prescribing CME)	Adoption Order Presented at 8/16/23 Meeting	Submission for Publication; Rule Effective Date Anticipated for 10/1/23
23-037 (EmR 2308)	044-22	11/23/2024	Med 26	Military Medical Personnel	Public Hearing on Permanent Rule at 8/16/23 Meeting (Emergency Rule effective 6/1/23-12/1/23)	Draft Final Rule and Legislative Report